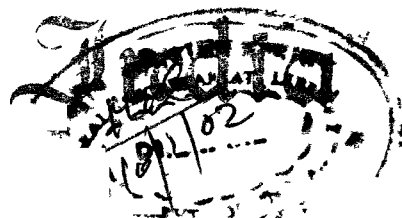




भारत का राजपत्र The Gazette of India

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सं. 45]

नई दिल्ली, शनिवार, नवम्बर 10, 2001/कार्तिक 19, 1923

No. 45]

NEW DELHI, SATURDAY, NOVEMBER 10, 2001/KARTIKA 19, 1923

इस भाग में भिन्न पृष्ठ रखी दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

कार्मिक, लोक-शिकायत तथा पेशन-मंत्रालय

(कार्मिक और प्रशिक्षण-विभाग)

नई दिल्ली, 25 अक्टूबर, 2001

का.आ. 3019.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस
स्थापना, अधिनियम, 1946 (अधिनियम सं. 25/1946)
की धारा 6 के साथ पठित धारा 5 की उप धारा (i)
द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उत्तर प्रदेश-सरकार,
गृह-विभाग (पुलिस), अनुभाग-3 की दिनांक 9-7-2001
की अधिसूचना सख्या-91(2)/जी.आई./6-पी-3-2001-
15-(47) पी./2001 द्वारा प्राप्त सहमति में, पुलिस थाना
सैक्टर-24, नोएडा, जिला गौतम बुद्ध नगर, उत्तर प्रदेश में
दिनांक 01-11-2000 को अपराध सख्या 261/2000 के
अंतर्गत दर्ज मामले के संबंध में भारतीय दंड संहिता की धारा
409, 420, 467, 468 और 471 के तहत दंडनीय
अपराधों और ऊपर वर्णित अपराधों से संबंधित अथवा समस्त
प्रयत्न, दुष्प्रेरण और पडयत्न तथा त्रैगे ही सव्यवहार के

अनुक्रम में किया गया अथवा किए गए अथवा उन्हीं तथ्यों
में उद्भूत किन्हीं अन्य अपराधों का अन्वेषण करने के लिए
दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और
अधिकारिता का विस्तार, एतद्द्वारा संपूर्ण उत्तर प्रदेश राज्य
के संबंध में करती है।

[स. 228/43/2001-ए बी डी-II]

हरि सिंह, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSION

(Department of Personnel and Training)

New Delhi, the 25th October, 2001

S. O. 3019.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State

Government of Uttar Pradesh vide Department of Home (Police) Section 3, Notification No. 91(2)/GI/6-P-3-2001-15(47)P 2001 dated 9/7/2001 hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Uttar Pradesh for investigation of offences under Sections 409, 420, 467, 468, and 471 of the Indian Penal Code and any other offence(s), attempts, abetments and conspiracy in relation to or in connection with the said offences committed during the course of same transaction or arising out of the same facts registered with Police Station Section-24, Noida, Distt. Gautambudh Nagar Uttar Pradesh vide Case Crime No. 261/2000 dated 1-11-2000

[No. 228/43/2001-AVD-II]
HARI SINGH Under Secy

नई दिल्ली, 25 अक्टूबर, 2001

का आ 3020—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम स. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हेतु मणिपुर राज्य सरकार सचिवालय गृह विभाग की अधिसूचना स. 4/11/(7)/2001-II, इस्तेमाल दिनांक 15 जून, 2001 द्वारा प्राप्त मणिपुर राज्य सरकार से सहमति से उक्त अधिसूचना के साथ अन्वद्ध ये प्रथा विनिर्दिष्ट अपराधों और उपर्युक्त अपराधों से संबंधित अथवा समन्त प्रयत्न, दुष्टेक्षण और षडयंत्र तथा उसी सव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध/अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण मणिपुर राज्य पर करती है।

[स. 228/45/2001-एवीडी-II]

हरि सिंह अवर सचिव

अन्वद्ध

भारतीय दंड संहिता 1860 (1860 का अधिनियम स. 45) की धारा 34, 114, 120-बी, 121, 121-ए, 122, 123, 124, 124-ए, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 140, 143, 147, 148, 149, 153-ए, 153-बी, 161, 162, 163, 164, 165, 165-ए, 166, 167, 168, 169, 171, 171-ई, 171-एफ, 182, 186, 188, 189, 190, 193, 196, 197, 198, 199, 200, 201, 204, 211, 212, 216, 216-ए, 218, 220, 222, 223, 224, 225, 225-बी, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260,

261, 262, 263, 263-ए, 277, 279, 281, 285, 286, 292, 295, 295-ए, 302, 303, 304, 304-ए, 304-बी, 306, 307, 308, 309, 322, 324, 325, 326, 328, 330, 331, 332, 333, 336, 337, 338, 341, 342, 343, 344, 345, 346, 347, 352, 353, 354, 355, 363, 363-ए, 364, 365, 366, 367, 368, 376, 376-ए, 376-बी, 376-सी, 376-डी, 379, 380, 381, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 399, 401, 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 426, 427, 429, 431, 435, 436, 440, 447, 448, 452, 454, 456, 457, 465, 466, 467, 469, 471, 472, 473, 474, 475, 476, 477-ए, 489, 489-ए, 489-बी, 489-सी, 489-टी, 489-ई, 495, 498-ए, 499, 500, 501, 502, 504, 505, 506, 507, 509 के अधीन दंडनीय अपराध।

केन्द्रीय अधिनियम

(ख) के अधीन दंडनीय अपराध —

- 1 वाययान अधिनियम, 1934 (1934 का अधिनियम स. 22) और उक्त अधिनियम के अधीन बनाए गए नियम।
- 2 यान-दहण निवारण अधिनियम 1982 (1982 का अधिनियम स. 65)
- 3 पुरावण तथा बहुमूल्य कलाकृति अधिनियम, 1972 (1972 का अधिनियम स. 52)
- 4 पुरावण (निर्यात निषेध) अधिनियम, 1947 (1947 का अधिनियम स. 31) निर्गमित।
- 5 आयुध अधिनियम, 1959 (1959 का अधिनियम स. 54)
- 6 परमाणु ऊर्जा अधिनियम, 1962 (1962 का अधिनियम स. 3)
- 7 केन्द्रीय उत्पाद शुल्क तथा तमक अधिनियम, 1944 (1944 का अधिनियम स. 1)
- 8 कम्पनी अधिनियम, 1956 (1956 का अधिनियम स. 1)
- 9 दंड विधि (मशोधन) अधिनियम, 1961 (1961 का अधिनियम स. 23)
- 10 सीमा शुल्क अधिनियम, 1962 (1962 का अधिनियम स. 52)
- 11 मायुधि तथा प्रभावित मायुधि अधिनियम, 1940 (1940 का अधिनियम स. 23)
- 12 अविद्यक वस्तु अधिनियम, 1955 (1955 का अधिनियम स. 10)

13. विस्फोटक अधिनियम, 1884 (1884 का अधिनियम सं. 4)
14. विस्फोटक पदार्थ अधिनियम, 1908 (1908 का अधिनियम सं. 6)
15. विद्युत अधिनियम, 1910 (1910 का अधिनियम सं. 9)
16. विदेशी अमिदाय (विनियमन) अधिनियम, 1976 (1976 का अधिनियम सं. 49)
17. विदेशियों विषयक अधिनियम, 1945 (1945 का अधिनियम सं. 31)
18. विदेशी मुद्रा विनियमन अधिनियम, 1973 (1973 का अधिनियम सं. 46)
19. साधारण बीमा कारवार (राष्ट्रीयकरण) अधिनियम, 1922 (1922 का अधिनियम सं. 57)
20. दान-कर अधिनियम, 1958 (1958 का अधिनियम सं. 18)
21. स्वर्ण (नियंत्रण) अधिनियम, 1968 (1968 का अधिनियम सं. 45)
22. आयकर अधिनियम, 1961 (1961 का अधिनियम सं. 13)
23. आयकर एवं निर्यात (नियंत्रण) अधिनियम, 1947 (1947 का अधिनियम सं. 18)
24. बीमा अधिनियम, 1938 (1938 का अधिनियम सं. 4)
25. उद्योग (विकास तथा विनियमन) अधिनियम, 1951 (1951 का अधिनियम सं. 65)
26. मोटर वाहन अधिनियम, 1939 (1939 का अधिनियम सं. 4)
27. स्वायत्त औपनिवेशिक मन्त्रप्रभावी पदार्थ अधिनियम, 1985 (1985 का अधिनियम सं. 61) तथा अन्तर्गत संशोधित
28. शासकीय गुप्त बान अधिनियम, 1923 (1923 का अधिनियम सं. 19)
29. पासपोर्ट अधिनियम, 1920 (1920 का अधिनियम सं. 24) और पासपोर्ट नियमावली, 1950 का नियम 6
30. पासपोर्ट (भारत में प्रवेश) नियमावली, 1950 संपठित पासपोर्ट (भारत में प्रवेश) अधिनियम 1920 (1920 का अधिनियम सं. 34)
31. पासपोर्ट अधिनियम, 1967 (1967 का अधिनियम सं. 15)
32. अप्रत्याचार निवारण अधिनियम, 1947 (1947 का अधिनियम सं. 2)
33. अप्रत्याचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49)
34. भारतीय डाकघर अधिनियम 1898 (1898 का अधिनियम सं. 6)
35. खाद्य अमिश्रण निवारण अधिनियम, 1954 (1954 का अधिनियम सं. 37)
36. लोक सम्पत्ति नुकसान निवारण अधिनियम, 1984 (1984 का अधिनियम सं. 3)
37. स्वायत्त औपनिवेशिक मन्त्रप्रभावी पदार्थों का अवैध व्यापार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 46)
38. भारतीय रेल अधिनियम, 1890 (1890 का अधिनियम सं. 9)
39. रेल सामग्री (विधि-विरुद्ध कब्जा) अधिनियम, 1955 (1955 का अधिनियम सं. 51)
40. लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का अधिनियम संख्या 43)
41. लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का अधिनियम संख्या 43)
42. विदेशियों को रजिस्ट्रीकरण अधिनियम, 1939 (1939 का अधिनियम संख्या 16)
43. सिविल विमानन सुरक्षा, विधि विरुद्ध कार्य दमन अधिनियम 1982 (1982 का अधिनियम संख्या 66)
44. धार्मिक संस्थाओं का (दुरुपयोग निवारण) अधिनियम, 1988 (1988 का अधिनियम संख्या 41)
45. तारक्य अधिनियम, 1885 (1885 का अधिनियम संख्या 13)
46. तारक्य संशोधन तार (विधि विरुद्ध कब्जा) अधिनियम 1950 (1950 का अधिनियम सं. 74)
47. आतंकवादों और विनाशकारी क्रियाकलाप (निवारण) अधिनियम 1985 (1985 का अधिनियम संख्या 31) और उसके अन्तर्गत बनाए गए नियम
48. आतंकवादों और विनाशकारी क्रियाकलाप (निवारण) अधिनियम 1987 (1987 का अधिनियम संख्या 28) और उसके अन्तर्गत बनाए गए नियम
49. विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम 1967 (1967 का अधिनियम संख्या 37)
50. जेल और तारक्य अधिनियम, 1933 (1933 का अधिनियम संख्या 17)
51. धन-कर अधिनियम 1957 (1957 का अधिनियम संख्या 27)
52. राष्ट्रीय गानक अमान निवारण अधिनियम, 1971

New Delhi, the 25th October, 2001

S. O. 3010.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Manipur, Secretariat, Home Department Notification No. 4/11/(7)/2001-II, Imphal dated 15th June, 2001, hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Manipur for investigation of offences as specified in Annexure to the aforementioned notification and attempt, abetment and conspiracy in relation to or in connection with the above said offences and any other offence/offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/45/2001-AVD.-II]
HARI SINGH, Under Secy.

ANNEXURE

A : Offences, punishable under Section 34, 114, 120B, 121, 121A, 122, 123, 124, 124A, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 140, 143, 147, 148, 149, 153A, 153B, 161, 162, 163, 164, 165, 165A, 166, 167, 168, 169, 171, 171E, 171F, 182, 186, 188, 189, 190, 193, 196, 197, 198, 199, 200, 201, 204, 211, 212, 216, 216A, 218, 220, 222, 223, 224, 225, 225B, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 263A, 277, 279, 284, 285, 286, 292, 295, 295A, 302, 303, 304, 304A, 304B, 306, 307, 308, 309, 323, 324, 325, 326, 328, 330, 331, 332, 333, 336, 337, 338, 341, 342, 343, 344, 345, 346, 347, 352, 353, 354, 355, 363, 363A, 364, 365, 366, 367, 368, 376, 376A, 376B, 376C, 376D, 379, 380, 381, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 399, 401, 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 426, 427, 429, 431, 435, 436, 440, 447, 448, 452, 454, 456, 457, 465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476, 477A, 489, 489A, 489B, 489C, 489D, 489E, 495, 498A, 499, 500, 501, 502, 504, 506, 507, 509, of the Indian Penal Code 1860 (Act No. 45 of 1860).

B. CENTRAL ACTS :

Offences punishable under :

1. Aircraft Act, 1934 (Act No. 22 of 1934) and rules made under the said Act.
2. Anti-Hijacking Act, 1982 (Act No. 65 of 1982)
3. Antiquities and Art Treasure Act, 1972 (Act No. 52 of 1972).

4. Antiquities (Export Control) Act, 1947 (Act No. 31 of 1947) Repealed.
5. Arms Act, 1959 (Act No. 54 of 1959).
6. Atomic Energy Act, 1962 (Act No. 3 of 1962).
7. Central Excise and Salt Act, 1944 (Act No. 1 of 1944).
8. Companies Act, 1956 (Act No. 1 of 1956).
9. Criminal Law (Amendment) Act, 1961 (Act No. 23 of 1961).
10. Customs Act, 1962 (Act No. 52 of 1962).
11. Drugs and Cosmetics Act, 1940 (Act No. 23 of 1940).
12. Essential Commodities Act, 1955 (Act No. 10 of 1955).
13. Explosive Act, 1884 (Act No. 4 of 1884).
14. Explosive Substances Act, 1988 (Act No. 6 of 1988).
15. Electricity Act, 1910 (Act No. 9 of 1910).
16. Foreign Contribution (Regulation) Act, 1976 (Act No. 49 of 1976).
17. Foreigners Act, 1945 (Act No. 31 of 1945)
18. Foreign Exchange Regulation Act, 1973 (Act No. 46 of 1973)
19. Central Insurance Business (Nationalization) Act, 1922 (Act No. 57 of 1922).
20. Gift Tax Act 1958 (Act No. 18 of 1958).
21. Gold Control Act, 1968 (Act No. 45 of 1968).
22. Income Tax Act, 1961 (Act No. 43 of 1961).
23. Import & Export (control) Act, 1947 (Act No. 18 of 1947).
24. Insurance Act, 1938 (Act No. 4 of 1938).
25. Industries (Development & Regulation) Act, 1951 (Act No. 65 of 1951).
26. Motor Vehicles Act, 1939 (Act No. 4 of 1939).
27. Narcotic Drugs & Psychotropic Substances Act, 1985 (Act No. 61 of 1985) as amended up-to date.
28. Official Secrets Act, 1923 (Act No. 19 of 1923).
29. Passport Act, 1920 (Act No. 24 of 1920) and rule 6 of passport Rules 1950.
30. The passport (entry into India) Rules, 1950 r/w Passport (entry into India) Act, 1920 (Act No. 34 of 1920).
31. Passport Act, 1967 (Act No. 15 of 1967).
32. Prevention of Corruption Act, 1947 (Act No. 2 of 1947).

33. Prevention of Corruption Act, 1988 (Act No. 49 of 1988).
34. Post Office Act, 1898 (Act No. 6 of 1898).
35. Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954).
36. Prevention of Damage to Public Property Act, 1934 (Act No. 3 of 1934).
37. The Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substance Act, 1988 (Act No. 46 of 1988).
38. Railway Act, 1890 (Act No. 9 of 1890).
39. Railway Stores (Unlawful Possession) Act, 1955 (Act No. 51 of 1955).
40. Representation of the People Act, 1950 (Act No. 43 of 1950).
41. Representation of the People Act, 1951 (Act No. 43 of 1951).
42. Registration of Foreigners Act, 1939 (Act No. 16 of 1939).
43. Suppression of Unlawful Act, against safety of Civil Aviation Act 1982 (Act No. 66 of 1982).
44. The Religious Institutions (Prevention of Misuse) Act, 1988 (Act No. 41 of 1988).
45. Telegraph Act, 1885 (Act No. 13 of 1885).
46. Telegraph Wires (Unlawful Possession) Act, 1950 (Act No. 74 of 1950).
47. Terrorist & Disruptive Activities (Prevention) Act 1985 (Act No. 31 of 1985) & Rules made there under.
48. Terrorist & Disruptive Activities (Prevention) Act, 1987 (Act No. 28 of 1987) & Rules made there under.
49. Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967).
50. Wireless & Telegraphy Act, 1933 (Act No. 17 of 1933).
51. Wealth Tax Act, 1957 (Act No. 27 of 1957).
52. Prevention of Insult to National Honours Act, 1971.

नई दिल्ली, 30 अक्टूबर, 2001

का. अ. 3021.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 137 पोसीनार 2001 दिनांक 14-08-2001 द्वारा प्राप्त नोटिफिकेशन को महसुस में दिल्ली विशेष पुलिस स्थापना,

के. अ. व्यूरो, एससीटी, बंगलौर में दर्ज मामला आरसी-25 (ए) 2001—बंगलौर में श्री मिथी, महयिक क्षेत्रीय प्रबन्धक, केन्द्रीय फिल्म प्रमाणन बोर्ड और किन्ही अन्य लोकसेवकों अथवा व्यक्तियों के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 7 के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक में संवर्धित अथवा संमिश्र प्रयत्नों, दुष्प्रेरणों और पड़ोस तथा उसी संघबन्धन के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के नव्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/68/2001-ए. वो. डी.-11]

हरि सिंह, अवसर सचिव

New Delhi, the 30th October, 2001

S. O. 3021.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government with the consent of the State Government of Karnataka vide Notification No. HD/137 PCR/2001, dated 14-8-2001, hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offence punishable under section 7 of the Prevention of Corruption Act, 1988 and attempts, abettments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts against Shri Sigha, Assistant Regional Officer, Central Board of Film Certification and any other public servants or persons registered with DSPE/CBI/ACB/Bangalore vide RC-25(A)/2001—BLR.

[No. 228/63 2001-AVD II]

HARI SINGH, Under Secy.

वित्त मन्त्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली 23 अक्टूबर, 2001

स्टाम्प

का.अ. 3022.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा सं. आई.ओ.एफ. सी.आई. लि. नई दिल्ली को प्राप्त इकट्ठे हुए एक हजार सत्त सौ पांच रुपये का समेकित स्टाम्प शुल्क अदा करने को अनुमति देती

है जो उक्त कम्पनी द्वारा नीचे वर्णित प्रोविडरी नोटों के स्वरूप के बंध पत्रों पर स्टाम्प शुल्क के कारण प्रभावी है।—

(क) 20-7-2001 को आवंटित मात्र सत्तर करोड़ अठारह लाख रुपये के कुल मूल्य के 42 00001 से 42 07 011 तक की विशिष्ट सख्या वाले आई.एफ.सी.आई.पी.पी. बंध पत्र (42 वीं श्रृंखला) आर;

(ख) 27-9-2001 को आवंटित मात्र एक करोड़ इक्यासी लाख चालीस हजार पांच सौ नब्बे रुपये के कुल मूल्य के 00 200 48 तक की विशिष्ट सख्या वाले आई.एफ.सी.आई. जमा पत्र।

[स. 48/2001-स्टाम्प एफ.स. 33/63/2000-बि.क.]
आर.जी. छावड़ा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 22nd October, 2001

STAMPS

S.O. 3022.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M/s. IFCI Limited, New Delhi to pay consolidated stamp duty of rupees seventy one lakh one thousand seven hundred five only chargeable on account of the stamp duty on Bonds in the nature of promissory notes described as—

- (a) IFCI PP Bonds (42nd Series) bearing distinctive numbers from 4200001 to 4207011 aggregating to rupees seventy crore eleven lakh only allotted on 20-7-2001.
- (b) IFCI Certificate of Deposit bearing distinctive number 0020048 aggregating to rupees one crore eighty one lakh forty thousand five hundred ninety only allotted on 27-9-2001; by the said Company.

[No. 48/2001-Stamp. I. No. 33/63 2001-ST]
R. G. CHHABRA, Under Secy

अदेश

नई दिल्ली, 22 अक्टूबर, 2001

स्टाम्प

का.आ. 3023.— भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, केन्द्रीय सरकार एतद्वारा मै. वरुण जिएम. कम्पनी लिमिटेड, मुम्बई को मात्र सत्ताईस लाख उन्नीस हजार छह सौ बीस रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कम्पनी द्वारा जारी किए जाने वाले इस-दस रुपये के सम मूल्य के मात्र छत्तीस करोड़ सत्तर लाख पन्द्रह हजार नौ सौ दस रुपये के समग्र मूल्य के 11 प्रतिशत अनुशुचित

पूर्णतया परिवर्तनीय ऋणपत्रों पर स्टाम्प शुल्क के कारण प्रभावी है।

[स. 49/2001-स्टाम्प/फा.स. 33/64/2001-बि.क.]
आर.जी. छावड़ा, अवर सचिव

ORDER

New Delhi, the 22nd October, 2001

STAMPS

S.O. 3023.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M/s. Varun Shipping Company Limited, Mumbai to pay consolidated stamp duty of rupees twenty seven lakh nineteen thousand six hundred twenty only chargeable on account of the stamp duty on 14% Unsecured Fully Convertible Debentures of rupees ten each at par aggregating to rupees thirty six crore twenty six lakh fifteen thousand nine hundred ten only, to be issued by the said company.

[No. 49 2001-Stamp. I. No. 33/64/2001-ST]
R. G. CHHABRA, Under Secy.

अदेश

नई दिल्ली, 22 अक्टूबर, 2001

स्टाम्प

का.आ. 3024.— भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, केन्द्रीय सरकार एतद्वारा पावर फाइनेंस कॉर्पोरेशन लिमिटेड, नई दिल्ली को मात्र एक करोड़ तिरसठ लाख अठारह हजार पाँच सौ रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कॉर्पोरेशन द्वारा जारी किए जाने वाले मात्र दो सौ सत्तर करोड़ अठारह लाख रुपये के समग्र मूल्य के प्रत्येक एक-एक लाख रुपये के 00000001 से 00021758 तक की विशिष्ट सख्या वाले ऋणपत्रों के स्वरूप वाले अनुशुचित विमोच्य प्रपरिवर्तनीय बंधपत्र (2008) IX श्रृंखला बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभावी है।

[स. 50/2001-स्टाम्प/फा.स. 33/65/2001-बि.क.]
आर.जी. छावड़ा, अवर सचिव

ORDER

New Delhi, the 22nd October, 2001

STAMPS

S.O. 3024.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Power Finance Corporation Ltd New Delhi to pay consolidated stamp duty of rupees one crore sixty three lakh eighteen thousand five hundred only on Unsecured Redeemable Non-Convertible Bonds (2008) IX Series Bond in the nature of Debentures bearing distinctive numbers from 00000001 to 00021758 of

का आ 3027— सर्वसाधारण की जानकारी के लिए यह अधिपत्रित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ड के साथ एडिड आयकर अधिनियम, 1961 की धारा 10 (23छ) के प्रयोजनार्थ

कर निर्धारण वर्ष 2002-2003, 2003-2004 और 2004-2005 के लिए नीचे पैरा 3 में उल्लिखित उद्यम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

- (i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ड. के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा;
- (ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम औद्योगिक उपक्रम—
- (क) अवसंरचनात्मक सुविधा को जारी रखना बन्द कर देता है; और
- (ख) खाताबहियों को रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ड. के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है, अथवा
- (ग) आयकर नियमावली, 1962 के नियम 2ड. के उपनियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम है—मैसर्स जिन्दल ट्रेवटेल्स पावर कम्पनी लि., जिन्दल मैनगन, 5 ए, जी देशमुख मार्ग, मुम्बई द्वारा 2 × 130 मेगावाट थर्मल पावर प्लांट, टोरानगल्लु जिला बैल्लारी, कर्नाटक। [फा.सं. 205/28/98-आयकर नि.-II (खंड-I)]

[अधिवृत्त सं. 318/2001/फा.सं. 205/28/98-आ.क.नि.-II-खंड II]

डा. राजेन्द्र कुमार, अवर सचिव

(Central Board of Direct Taxes)

New Delhi, the 4th October, 2001

S.O. 3027.—It is notified for general information that enterprise listed at para (2) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2 The approval is subject to the condition that—

- (i) the enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;
- (ii) the Central Government shall withdraw this approval if the enterprise/industrial undertaking :—
- (a) ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise approved is—2 × 130 MW Thermal power plant at Toranagallu, Bellary District Karnataka by M/s. Jindal Tractebel Power Company Limited, Jindal Mansion, 5A, G. Deshmukh Marg, Mumbai (F. No. 205/28/98/ITA-II-Vol. I).

[Notification No. 318/2001/F. No. 205/28/98-ITA-II Vol. I]

Dr. RAJENDRA KUMAR, Under Secy.

नई दिल्ली, 4 अक्टूबर, 2001

का.आ. 3028.—सर्वसाधारण की जानकारी के लिए यह अधिमुचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ड. के साथ पठित आयकर अधिनियम 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-2003, 2003-2004 और 2004-2005 के लिए नीचे पैरा 3 में उल्लिखित उद्यम को अनुमोदित करती है।

2. यह अनुमोदित इस शर्त के अधीन है कि :—

- (i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ड. के साथ पठित आयकर अधिनियम, 1961 की धारा 10 (23 छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,
- (ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम औद्योगिक उपक्रम :—
- (क) अवसंरचनात्मक सुविधा को जारी रखना बन्द कर देता है; और
- (ख) खाताबहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ड. के उपनियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है, अथवा ;
- (ग) आयकर नियमावली, 1962 के नियम 2ड. के उपनियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम है—निदेशक (टी.एम.-I), दूर संचार विभाग के माध्यम से कार्यरत समूह के राष्ट्रपति और मैसर्स स्काईसेल कम्प्यूनिकेशन प्रा. लि. के मध्य दिनांक 30-11-94 में लाईसेंस करार सं. 842-19/93-टी.एम. के अंतर्गत मैसर्स स्काईसेल कम्प्यूनिकेशन लि. द्वारा मद्रास टेलीफोन डिस्ट्रिक्ट, मराई-मलाई नगर एक्सपोर्ट प्रोसेसिंग जोन (एम.ई.पी.-2), मिनजर तथा

महाबलीपुरम द्वारा सेविम म्यानीय क्षेत्रों में सेल्युलर मोबाइल टेलीफोन सेवा (फा. सं. 205/4/2000/आई टी ए II-खंड I)

[अधिसूचना सं. 319/2001/फा. सं. 205/4/2000-
आ.क.नि.-II खंड-I]
डा. राजेन्द्र कुमार, अवर सचिव

New Delhi, the 4th October, 2001

S.O. 3028.—It is notified for general information that enterprise, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2. The approval is subject to the condition that—

- (i) the enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962 ;
- (ii) the Central Government shall withdraw this approval if the enterprise/industrial undertaking :—
 - (a) ceases to carry on infrastructure facility; or
 - (b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or
 - (c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules 1962.

3. The enterprise approved is—Cellular Mobile Telephone Service in local area served by Madras Telephone District, Maraimalai Nagar Export Processing Zone (MEP 2), Minzur and Mahawalipuram by M/s. Skycell Communication Ltd., under the license agreement No. 842-19/93-TM dated 30-11-1994 between President of India, acting through Director (TM-I), Department of Communication and M/s. Skycell Communication Pvt. Ltd. (F. No. 205/4/2000/ITA-II-Vol.I).

[Notification No. 319/2001/F. No. 205/4/2000-ITA-II-Vol. I]

Dr. RAJENDRA KUMAR, Under Secy.

नई दिल्ली, 18 अक्टूबर, 2001

आयकर

का.आ. 3029.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार नीचे लिखे संगठन को उनके नाम के समाने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (II) के प्रयोजनार्थ 3364 GI/2001—2.

संस्था श्रेणी के अन्तर्गत निम्नलिखित जनों के अधीन अनुमोदित करती है :—

- (i) अधिसूचित संघ अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगा,
- (ii) अधिसूचित संघ प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग “टेक्नोलॉजी भवन”, न्यू महरौली रोड, नई दिल्ली-110016 को प्रस्तुत करेगा,
- (iii) अधिसूचित संघ केन्द्र सरकार की तरफ से नामो-दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों जिसके लिए आयकर अधिनियम 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संस्था पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट), 10 मिडिलटन राँ, पाचवा तल, कलकत्ता-700071 (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्टूबर को अथवा उससे पहले प्रस्तुत करेगा।

क्रम सं. अनुमोदित संगठन का नाम अवधि जिसके लिए अधिसूचना प्रभावी है

1	2
1. इन्टरनेशनल एडवान्सड रिसर्च सेंटर फॉर पावर मेटैलर्जिकल एण्ड न्यू मेटैरियल्स, बालापुर गांव के सामने, जिला रंगा रेड्डी, हैदराबाद-500005.	1-4-2000 से 31-3-2003

टिप्पणी :— अधिसूचित संघ को सलाह दी जाती है कि वे अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं.-325/2001/फा.सं. 203/30/2001-
आ.क.नि.-II]
संगीता गुप्ता, निदेशक आयकर नि.-II

New Delhi, the 18th October, 2001

(INCOME-TAX)

S.O. 3029.—It is hereby notified for general information that the organisations mentioned below have been approved by the Central Government for the period mentioned against their names, for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961, read with Rule 6 of the Income-tax Rules, 1962 under the category 'Association' subject to the following conditions :—

- (i) The notified Association shall maintain separate books of accounts for its research activities;
- (ii) The notified Association shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific and Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;
- (iii) The notified Association shall submit, on behalf of the Central Government, to (a) the Director General of Income-tax (Exemptions), 10, Middleton Row, 5th Floor, Calcutta-700071, (b) the Secretary, Department of Scientific and Industrial Research, and (c) the Commissioner of Income-tax/Director of Income-tax (Exemptions), having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income and Expenditure Account in respect of its research activities for which exemption was granted under sub-section (1) of section 35 of Income tax Act, 1961 in addition to the return of income tax to the designated assessing officer

S No.	Name of the organisation approved	Period for which Notification is effective
1.	International Advanced Research Centre for Powder Metallurgy and New Materials, Opp. Balapur Village, Ranga Reddy Distt., Hyderabad-500 005.	1-4-2000 to 31-3-2003

Note :—The notified Association is advised to apply in triplicates and well in advance for renewal of the approval, to the Central Government through the Commissioner of Income-tax/Director of Income-tax (Exemptions) having jurisdiction. Three copies of application for renewal of approval shall also be

sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 325/2001/F. No. 203/30/2001-ITA-III]

SANGEET GUPTA, Director (ITA. II)

नई दिल्ली, 30 अक्टूबर 2001

(आयकर)

का. आ. 3030—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त छवियों का प्रयोग करने द्वारा केन्द्रीय सरकार एनवद्द्वारा "एच. एच. एल. एन. एल. मोबाइल, नई दिल्ली" को 1997-98 से 1999-2000 तक के कर निर्धारण वर्षों के लिए निम्नलिखित शर्तों के अधीन रहने हुए उक्त खंड के प्रयोजनार्थ अधिगृहीत करती है, अर्थात्

- (i) कर निर्धारिणी उसकी आय का इस्तेमाल अथवा उसकी आय का इस्तेमाल करने के लिए उसका संचयन इस प्रकार के संचयन हेतु उक्त खंड (23) द्वारा यथा सशोषित धारा ii की उपधारा (2) और (3) के उपबंधों के अनुरूप पूर्णतया तथा अनन्त रूप से उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है.
- (ii) कर निर्धारिणी उपयुक्त कर निर्धारण वर्षों में सगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा ii की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक दृश अथवा तरीकों में निम्न तरीकों में उसकी निधि (जबर-जबाहिरान, फर्निचर अथवा किसी अन्य वस्तु, जिसे उपयुक्त खंड (23) के तीसरे परन्तुक के अधीन बॉर्डे द्वारा अधिगृहीत किया जाए, के रूप में प्राप्त तथा अरक्षित स्वैच्छिक अनादान से भिन्न का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा
- (iii) कर निर्धारिणी इसके सदस्यों को किसी भी तरीके से इसकी आय के किसी भाग का सवितरण अपने सम्पत्ति किसी एमोर्सिएसन अथवा संस्था को अनादान के अलवा नहीं करेगा, और
- (iv) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जो कि कारोबार में प्राप्त लाभ तथा अभिवाह हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिणी के उद्देश्यों की प्राप्ति के लिए प्राप्तिक्रम नहीं हो तथा ऐसे कारोबार के संबंध में अलग से देखा पुस्तिका नहीं रखी जाती हो।

[अधिसूचना सं. 341/2001 का सं. 196/5/2000-आयकर नि. I]

आई पी एस दिग्ग, अवर सचिव

New Delhi, the 30th October, 2001

(INCOME-TAX)

S.O. 3030.—In exercise of the powers conferred by clause (23) of Section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "Durand Football Tournament Society, New Delhi" for the purpose of the said clause for assessment years 1997-98 to 1999-2000 subject to the following conditions, namely :—

- (i) the assessee will apply its income, or accumulate it for application, in consonance with the provisions of sub-section (2) and (3) of Section 11 as modified by the said clause (23) for such accumulation wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its funds other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as may be notified by the Board under the

third provision to the aforesaid clause (23) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;

- (iii) the assessee will not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it; and
- (iv) this notification will not apply in relation to any income, being profits and gains of business unless the business is incidental to the attainments of the objectives of the assessee and separate books of accounts are maintained in respect of such business.

[Notification No. 341/2001/F. No. 196/5/2000-ITA-I]

P. S. BINDRA, Under Secy.

(कार्यालय मुख्य आयकर आयुक्त)

आदेश

भोपाल, 24 अगस्त, 2001

का.आ.3031.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 120 की उपधाराएं (1) व (2) तथा दिनांक 27 अक्टूबर, 1989 की अधिसूचना एस.ओ. 868 (ई) द्वारा यथा संशोधित केन्द्रीय प्रत्यक्ष कर बोर्ड नई दिल्ली की दिनांक 30 मार्च, 1988 का सं. 279/17/88—आई.टी.जे./एम.ओ. 361(ई) की अधिसूचना सं. 7842 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं मुख्य आयकर आयुक्त, (संवर्ग नियंत्रक प्राधिकारी), मध्य प्रदेश एवं छत्तीसगढ़ क्षेत्र, एतद्वारा—

निर्देशित करता हूँ कि जहां तक किसी अन्य अधिसूचना में अन्यथा अपेक्षित न हो, संलग्न अनुलग्नक के कॉलम-2 में निर्दिष्ट आयकर आयुक्त (अपील), उक्त अनुलग्नक के कॉलम-3 में दर्शाये उनके मुख्यालय के कॉलम-5 में दर्शाये प्रकरणों या व्यक्तियों के प्रकरणों की श्रेणियों के संबंध में दाखिल अपील पर तथा कॉलम-1 में दर्शाये आयकर प्राधिकारियों के कार्यक्षेत्र से संबंधित कार्यों के संबंध शक्तियों का प्रयोग करेंगे ।

2 यह अधिसूचना 1-9-2001 से प्रभावी होगी ।

अनुलग्नक

1.	2	3	4	5
1. आयकर आयुक्त (अपील)-1	भोपाल	आयकर आयुक्त, भोपाल	रेज-1 व रेज-2 के कार्यक्षेत्र के प्रकरण	
2. आयकर आयुक्त (अपील)-2	भोपाल	आयकर आयुक्त, भोपाल	रेज-3 के कार्यक्षेत्र के प्रकरण	
3. आयकर आयुक्त (अपील)-1	जबलपुर	आयकर आयुक्त-1, जबलपुर	सभी प्रकरण	
4. आयकर आयुक्त (अपील)-2	जबलपुर	आयकर आयुक्त-2, जबलपुर	सभी प्रकरण	
5. आयकर आयुक्त (अपील)	ग्वालियर	आयकर आयुक्त, ग्वालियर	सभी प्रकरण	
6. आयकर आयुक्त (अपील)-1	इंदौर	आयकर आयुक्त-1, इंदौर	सभी प्रकरण	
7. आयकर आयुक्त (अपील)-2	इंदौर	आयकर आयुक्त-2, इंदौर	सभी प्रकरण	
8. आयकर आयुक्त (अपील)	उज्जैन	आयकर आयुक्त, उज्जैन	सभी प्रकरण	

[फा. सं. मस्रा/मप्र/(सीसीए) व छग/क्षेत्र/आ.आ. (अ)/97-98]
जी.पी. नंदा, संवर्ग नियंत्रक, मुख्य आयकर आयुक्त, रायपुर

OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX
ORDER

Bhopal, the 24th August, 2001

S.O. 5031.—In exercise of the powers conferred by sub-sections (1) and (2) of Section 120 of the Income-tax Act, 1961 (43 of 1961), and in exercise of the powers conferred on me by the Government of India, Central Board of Direct Taxes, New Delhi, Notification No. 8478 in F. No. 279/121/89-ITJ/S.O. 868(E) of Income-tax Act, 1961 (43 of 1961) and all other powers enabling me in this behalf, I, the Chief Commissioner of Income-tax, (CCA), M.P. and Chhattisgarh Region, hereby direct that, Commissioner of Income-tax (Appeals)-I, Bhopal SHALL NOT and Commissioner of Income-tax (Appeals)-II, Bhopal SHALL perform his function in respect of the pending appeals as on 31-08-2001, arising out of the orders of the Assessing Officers within the administrative control of the Commissioner of Income-tax, Bhopal in respect of those appellants, who have their names starting from alphabets N to Z. Appeals filed or instituted after 01-09-2001 will be decided by CIT(A)-I, Bhopal as per the jurisdiction notified vide CIT (CCA), Raipur Order No. CCIT/MP/(CCA), MP and Chhattisgarh/JURIS/CIT (A)/97-98 dated 24th August, 2001.

This notification shall come into force with effect from 01-09-2001.

SCHEDULE

1	2	3	4	5
1.	Commissioner of Income Tax (Appeals)-I.	Bhopal	Commissioner of Income Tax, Bhopal.	Cases under the jurisdiction of Ranges 1 and 2, Bhopal.
2.	Commissioner of Income Tax (Appeals)-II.	Bhopal	Commissioner of Income Tax, Bhopal.	Cases under the jurisdiction of Range 3, Bhopal.
3.	Commissioner of Income Tax (Appeals)-I.	Jabalpur	Commissioner of Income Tax-I, Jabalpur.	All cases.
4.	Commissioner of Income Tax (Appeals)-II.	Jabalpur	Commissioner of Income Tax-II, Jabalpur.	All cases.
5.	Commissioner of Income Tax (Appeals).	Gwalior	Commissioner of Income Tax, Gwalior.	All cases.
6.	Commissioner of Income Tax-I (Appeals).	Indore	Commissioner of Income Tax-I, Indore.	All cases.
7.	Commissioner of Income Tax II (Appeals).	Indore	Commissioner of Income Tax-II, Indore	All cases.
8.	Commissioner of Income Tax (Appeals).	Ujjain	Commissioner of Income Tax, Ujjain.	All cases.

[F. No. CCIT/MP/(CCA) & Chhattisgarh/JURIS/CIT(A)/97-98]

G. P. NANDA, Cadre Controlling Chief Commissioner of Income Tax, Raipur

सीमा शुल्क एवं केन्द्रीय उत्पाद शुल्क के आयुक्त का कार्यालय
हैदराबाद III आयुक्तालय

हैदराबाद, 20 सितम्बर, 2001

सं. 01/2001-के.उ.शु. (एन.टी.)

का.आ. 3032:— भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली द्वारा केन्द्रीय उत्पाद शुल्क (संस्था-2) नियमावली, 2001 के नियम 20 के उप नियम (2) के अंतर्गत जारी दिनांक 26-06-2001 के परिपत्र सं. 579/16/2001-के.उ.शु. के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं गाँव-इमामपेट, मडल-सूर्यपेट, जिला-नलगोंडा आंध्रप्रदेश राज्य को केन्द्रीय उत्पाद शुल्क (संस्था-2) नियमावली, 2001 के नियम 9 के अंतर्गत वेयर हाउस के पंजीकरण के उद्देश्य के लिए एतद्वारा वेयर हाउसिंग स्थान घोषित करती हूँ।

[फाईल सी.सं. IV/16/228/2001-तकनीकी]

सुनीपा बसु, आयुक्त

OFFICE OF THE COMMISSIONER OF CUSTOMS
AND CENTRAL EXCISE

Hyderabad, III Commissionerate

Hyderabad, the 20th September, 2001

No. 01/2001-C.E.x. (NT)

S.O. 3032.—In exercise of the powers conferred by the Central Board of Excise and Customs, Government of India, Ministry of Finance, Department of Revenue, New Delhi by Circular No. 579/16/2001-CX. dated 26-06-2001 issued under Sub-rule (2) of Rule 20 of Central Excise (No. 2) Rules, 2001, I hereby declare village Imampet, Suryapet Mandal, Nalgonda District in the state of Andhra Pradesh, to be a warehousing place for the purpose of registration of warehouses under Rule 9, of the Central Excise (No. 2) Rules, 2001.

[F. C. No. IV/16/228/2001-Tech.]
SUNIPA BASU, Commissioner

हैदराबाद, 20 सितम्बर, 2001

सं. 02/2001-के.उ.शु. (एन.टी.)

का.आ. 3033:—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली द्वारा केन्द्रीय उत्पाद शुल्क (संस्था-2) नियमावली, 2001 के नियम 20 के उप नियम (2) के अंतर्गत जारी दिनांक 26-06-2001 के परिपत्र सं. 579/16/2001-के.उ.शु. के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं गाँव-अंकुषापुर, मंडल-घटकेसर, जिला-रंगारेड्डी आंध्रप्रदेश राज्य को केन्द्रीय उत्पाद शुल्क (संस्था-2) नियमावली, 2001 के नियम 9 के अंतर्गत वेयर हाउस के पंजीकरण के उद्देश्य के लिए एतद्वारा वेयर हाउसिंग स्थान घोषित करती हूँ।

[फाईल सी.सं. IV/16/228/2001-तकनीकी]

सुनीपा बसु, आयुक्त

Hyderabad, the 20th September, 2001

No. 02/2001-C.Ex.(NT)

S.O. 3033.—In exercise of the powers conferred by the Central Board of Excise and Customs, Government of India, Ministry of Finance, Department of Revenue, New Delhi, by Circular No. 579/16/2001-CX. dated 26-06-2001 issued under Sub-rule (2) of Rule 20 of the Central Excise (No. 2) Rules, 2001, I hereby declare village Ankushaur, Ghatkesar Mandal, Ranga Reddy District in the state of Andhra Pradesh to be a warehousing place for the purpose of registration of warehouses under Rule 9 of the Central Excise (No. 2) Rules, 2001.

[F. C. No. IV/16/228/2001-Tech.]
SUNIPA BASU, Commissioner

(आर्थिक कार्य विभाग)

(वैकिंग प्रभाग)

नई दिल्ली, 30 अक्टूबर, 2001

का.आ. 3034:—सरकारी स्थान (अप्राधिकृत अधिमोक्तियों की वेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये और भारत सरकार, वित्त मंत्रालय, आर्थिक कार्य विभाग (वैकिंग प्रभाग) की दिनांक 08-06-1989 की अधिसूचना सं. 13/01/86 बी.ओ.-III का अधिक्रमण करते हुये, ऐसे अधिक्रमण से पूर्व उन बातों के सिवाय, जिन्हें किया गया है या करने का लोप किया गया है, केन्द्रीय सरकार, एतद्वारा सरकार के राजपत्रित अधिकारियों के स्तर के समकक्ष अधिकारियों को उक्त अधिनियम के प्रयोजन के लिये सम्पदा अधिकारियों के रूप में नियुक्त करती है, जो सारणी के कालम (2) में उल्लिखित सरकारी स्थानों के संबंध में उक्त अधिनियम के द्वारा या उसके अधीन सम्पदा अधिकारियों को प्रदत्त शक्तियों का प्रयोग करेंगे और उन्हें सीपे गये कर्तव्यों को पूरा करेंगे :—

सारणी

अधिकारी का पदनाम

सरकारी स्थानों की श्रेणियाँ और क्षेत्राधिकार की स्थानीय सीमाएँ

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सर्किल प्रधान, इंडियन बैंक,
सर्किल कार्यालय, गडबदाबाद।

सर्किल प्रधान, इंडियन बैंक,
सर्किल कार्यालय, बेगलूर

सर्किल प्रधान, इंडियन बैंक,
सर्किल कार्यालय, भुवनेश्वर।

सर्किल प्रधान, इंडियन बैंक,
सर्किल कार्यालय, कोलकाता।

सर्किल प्रधान, इंडियन बैंक,
सर्किल कार्यालय, चंडीगढ़।

सर्किल प्रधान, इंडियन बैंक, सर्किल
कार्यालय, चेन्नई उत्तर

सर्किल प्रधान, इंडियन बैंक, सर्किल
कार्यालय, चेन्नई दक्षिण

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इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और गुजरात राज्य में अहमदाबाद, आनंद, भरूच, भावनगर, गांधी नगर, जामनगर, जनागढ़, कच्छ, खेडा, महसना, पवमहल, पोरबन्दर, राजकोट, सूरत, उदयपुर वडोदरा और वलसाड जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और राजस्थान राज्य में अजमेर, अलवर, भरतपुर, भीलवाड़ा, बीकानेर, जयपुर, जाधपुर, और उदयपुर जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और गोवा राज्य के उत्तर गोवा और दक्षिण गोवा जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और कर्नाटक राज्य में बागलकोट, बंगलूर शहरी, बेलगाम, बेल्लारी, बीजापुर, कामराजपुर, चिकमगलूर, चित्रदुर्ग, दक्षिण कन्नड़, हावर्णारे, धारवाड, गलेबर्गा, हसन, हावेरी, कोडागू, मड्या, मैसूर, रायचूर, शिमोगा, टमकुल, उडिपी, उत्तर कन्नड़ जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और छत्तीसगढ़ राज्य में दुर्ग और रायपुर जिला में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और उड़ीसा राज्य के बौध, कटक, धेनकनाल, गजपति, गजम, जगतसिंहपुर, जयपुर, केन्द्रपाड़ा, खुर्दा, कोरापुट, कुर्डी तयागढ़, पुरी, रायगढ़, सन्तलपुर और गन्धमगढ़ जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और पश्चिम बंगाल राज्य के बाकुल, बर्धमान, कोलकाता, दक्षिण दिनाजपुर, दार्जिलिंग, हावड़ा, हुगली, जलपाईगुडी, मालदा, मदनीपुर और 24-पगना और गुरुनिया जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और चंडीगढ़ राज्य में चंडीगढ़ जिले में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और हरियाणा राज्य में अम्बाला, भिवानी, फरीदाबाद, गुडगांव, हिसार, करनाल, पानीपत, राहतक, सिरसा, सोनीपत और यमुनानगर जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और हिमाचल प्रदेश राज्य में शिमला जिले में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और पंजाब राज्य में प्रमनसर, मटिडा, होशियारपुर, जालंधर, कपूरथला, लुधियाना, मागा, नवागढ़, पटियाला, रूपनगर और सनधर जिलों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य के चेन्नई और तिरुवेलूर जिला में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और अड़मान एवं निकोबार राज्य में अड़मान जिले में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य के तमिल, हावोपुरम और तिरुवेलूर जिला में अवस्थित स्थान।

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सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, चित्तूर

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, कायम्पटूर ।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, कुड्डलूर ।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, धर्मपुरी

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, एन्कीकुलम

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, राजाहाटी

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, हैदराबाद

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, काचीपुरम

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, कुम्भकोनम

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, लखनऊ

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, मदुरै

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, मुम्बई ।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, नई दिल्ली ।

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इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और आन्ध्र प्रदेश राज्य के अनन्तपुर, चित्तूर, कुड्डलूर और तेल्लूर जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य के कायम्पटूर, उरोड और नीलगिरी जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य के कुन्नूर और विल्लुपुरम जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य के धर्मपुरी जिले में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और केरल राज्य के अन्नपुड़ा कैम्प, एण्किुलम, वसरागोड, काल्वम, कोट्टयम, कोजिकोड, मानापुरम, पैनाकोड, पथानामथिट्टा, तिरुवनन्तपुरम और त्रिसूर जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और पाण्डिचेरी राज्य के माह जिले में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और असम राज्य के कच्छार, दिब्रुगढ़, गोलपारा, गोलाघाट औरहाट, कामरूप, लखिमपुर, नयागाँव, मिनपागर, मानिनपुर और तिनमुक्किया जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया मेघालय राज्य के ईस्ट खासी हिल्स और राई भाई जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया नागालैंड राज्य के कोहिंगा जिले में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया त्रिपुरा राज्य के दक्षिण त्रिपुरा जिले में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया आन्ध्र प्रदेश राज्य के हैदराबाद, फरीमनगर, खम्मम, कुन्नूल, महबूब नगर, मेडक, नातगोंडा, निजाम-बाद, रंगारेड्डी और वांगल जिले में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य के काचीपुरम एवं तिरुवल्लूर जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य के नागापट्टिनम, तंजावूर, तिरुवरूर जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और उत्तर प्रदेश राज्य के अजमेर, अलीगढ़, अलाहाबाद, बरेली, बुलन्दशहर, गाजियाबाद, कानपुर शहर, लखनऊ, मथुरा, मेरठ, मिर्जापुर, मुरादाबाद, मुजफ्फर नगर, महाराजपुर, भाहजहापुर और वाराणसी में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और उत्तरांचल के देहरादून और हरिद्वार जिलों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया तमिलनाडु राज्य में इन्डुगल, मदुरै, रामनाथपुरम, मिन्नगल और थेर्णा जनपदों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया महाराष्ट्र राज्य में ठाठ मुम्बई और थाणे जनपदों में अवस्थित स्थान ।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया दिल्ली राज्य में दिल्ली जनपदों में अवस्थित स्थान ।

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सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, पटना।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया मध्य प्रदेश राज्य में भापाल, देशाम, खालियर, हन्दीर, जबलपुर, रतलाम, सागर, मिहोर, उज्जैन जनपदों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, पाण्डिचेरी।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया बिहार राज्य में औरंगाबाद, भागलपुर, भोजपुर, दरभंगा, गया, जहानाबाद, मजफ्फरपुर, पटना, समस्तीपुर और सीतामढ़ी जनपदों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया मारखण्ड राज्य में बांकारो, धनबाद, पूर्वी सिंहभूम और रांची जनपदों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया पाण्डिचेरी राज्य में करायल और पाण्डिचेरी जनपदों में अवस्थित स्थान।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया तमिलनाडु राज्य में विल्लुपुरम जनपद में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, पुणे।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया महाराष्ट्र राज्य में अहमदनगर, अकोला, अमरावती, औरंगाबाद, चंद्रपुर, कोल्हापुर, नागपुर, नासिक, पुणे, सांगली, सातारा, सोलापुर और यवतमाल जनपदों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, सालेम

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य में तमिळुकाल और सालेम जिलों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, थंजावुर।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य में पुडकोट्टई और थंजावुर जिलों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, तिरुनालवेली।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य में कन्याकुमारी, तिरुनालवेली, उट्टीकोरिन और विरुदुनगर जिलों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, तिरुची।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य में कन्नूर, पेराम्बलूर और तिरुचिरापल्ली जिलों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, वेल्तूर।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और तमिलनाडु राज्य में तिरुवन्नामलाई और वेल्तूर जिलों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, त्रिजयवाड़ा।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और आन्ध्र प्रदेश राज्य में गुंटूर, कृष्णा और प्रकासम जिलों में अवस्थित स्थान।

सर्किल प्रधान, इंडियन बैंक, सर्किल कार्यालय, विशाखापट्टनम।

इंडियन बैंक का अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर लिया गया और आन्ध्र प्रदेश राज्य में पूर्वी गोदावरी, श्रीकाकुलम, विशाखापट्टनम, विजयनगरम और पूर्वी गोदावरी जिलों में अवस्थित स्थान।

इंडियन बैंक का और पाण्डिचेरी राज्य में यानम जिलों में अवस्थित स्थान।

[फा.सं. 13/10/2001-बी ओ ए]

डी. चौधरी, अवर सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 30th October, 2001

S. O. 3034 .— In exercise of the powers conferred by the Section 3 of Public Premises (Eviction of unauthorised occupants) Act, 1971, (40 of 1971), and in supersession of the notification of Government of India in the Ministry of Finance, Department of Economic Affairs (Banking Division) No. 13/01/88-BO-III dated 08-06-1989, except in respect of things done or omitted to be done before such supersession the Central Government hereby appoints the Officers equivalent to the Rank of a Gazetted Officer of Government to be Estate Officers for the purposes of the said Act who shall exercise the powers

conferred and perform the duties imposed on the estate officers by or under the said Act in respect of the Public Premises specified in the Column (2) of the Table.

TABLE

Designation of the Officer	Categories of Public Premises and Local Limits of Jurisdiction.
(1)	(2)
Circle Head, Indian Bank. Circle Office, Ahmedabad	<p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Ahmedabad, Anand, Bharuch, Bhavnagar, Gandhi Nagar, Jamnagar, Junagarh, Kachchh, Kheda, Mehesana, Panch Mahel Porbander, Rajkot, Surat, Udaipur, Vadodra and Valsad in the state of Gujarat.</p> <p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Ajmer, Alwar, Bharatpur, Bhilwara, Bikaner, Jaipur, Jodhpur, and Udaipur in the state of Rajasthan.</p>
Circle Head, Indian Bank. Circle Office, Bangalore.	<p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of North Goa, South Goa in the state of Goa.</p> <p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Bagalkote, Bangalore Urban, Belgaum, Bellary, Bijapur, Chamrajnagar, Chikmagalur, Chitradurga, Dakshin, Kannad, Davangere, Dharwad, Gulbarga, Hassan, Haveri, Kodagu, Mandya, Mysore, Raichur, Shimoga, Tumkur, Udipi, Uttar Kannad in the state of Karnataka.</p>
Circle Head, Indian Bank. Circle Office, Bhubaneswar.	<p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Durg and Raipur in the state of Chattisgarh.</p> <p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Boudh, Cuttack, Dhenkanal, Gajapati, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Khurda, Koraput, Kurda, Nayagarh, Puri, Rayagada, Sambalpur, and Sundargarh in the state of Orissa.</p>
Circle Head, Indian Bank. Circle Office, Kolkata	<p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Bankura, Bardhaman, Kolkata, Dakshin Dinajpur, Darjiling, Haora, Hugli, Jalpaiguri, Maldah, Medinipur, North 24-Parganas and Puruliya in the state of West Bengal.</p>
Circle Head, Indian Bank. Circle Office, Chandigarh.	<p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Chandigarh in the state of Chandigarh.</p> <p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Ambala, Bhiwani, Faridabad, Gurgaon, Hissar, Karnal, Panipat, Rohtak, Sirsa, Sonapat, and Yamunagar in the state of Haryana.</p> <p>Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Simla in the state of Himachal Pradesh.</p>

	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Amritsar, Bathinda, Hoshiarpur, Jalandhar, Kapurthala, Ludhiana, Moga, Nawanshahr, Patiala, Rupnagar and Sangrur in the state of Punjab.
Circle Head, Indian Bank, Circle Office, Chennai North	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Chennai and Tiruvallur in the state of Tamil Nadu.
Circle Head, Indian Bank, Circle Office, Chennai South	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Andaman in the state of Andaman and Nicobar.
	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Chennai, Kanchipuram and Tiruvallur in the state of Tamil Nadu.
Circle Head, Indian Bank, Circle Office, Chittoor.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Anantapur, Chittoor, Cuddapah and Nellore in the state of Andhra Pradesh.
Circle Head, Indian Bank, Circle Office, Coimbatore.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Coimbatore, Erode and Nilgiris in the state of Tamil Nadu.
Circle Head, Indian Bank, Circle Office, Cuddalore.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Cuddalore and Villupuram in the state of Tamil Nadu.
Circle Head, Indian Bank, Circle Office, Dharmapuri	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Dharmapuri in the state of Tamil Nadu.
Circle Head, Indian Bank, Circle Office, Ernakulam.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Alapuzha, Cannur, Ernakulam, Kasaragod, Kollam, Kottayam, Kozhikode, Malappuram, Palakkad, Pathanamthitta, Thiruvananthapuram and Thrissur in the state of Kerala.
	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Mahe in the state of Pondicherry.
Circle Head, Indian Bank, Circle Office, Guwahati.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Cachar, Dibrugarh, Goalpara, Goalpara ghat, Jorhat, Kamrup, Lakhimpur, Nagaon, Sibsagar, Sonitpur, and Tinsukia in the state of Assam.
	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of East Khasi Hills and Ri Bhoi in the state of Meghalaya.
	Premises belonging to, or taken on lease, by, or on behalf of, the Indian Bank and situated in the districts of Kohima in the state of Nagaland.
	Premises belonging to or taken on lease, by or on behalf of, the Indian Bank and situated in the districts of West Tripura in the state of Tripura.
Circle Head, Indian Bank, Circle Office, Hyderabad.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Hyderabad, Karimnagar, Khammam, Kurnool, Mahbubnagar, Medak, Nalgonda, Nizamabad, Raichur and Warangal in the state of Andhra Pradesh.
Circle Head, Indian Bank, Circle Office, Kancheepuram.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Kancheepuram and Tiruvallur in the state of Tamilnadu.

Circle Head, Indian Bank, Circle Office, Kumbakonam.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Nagapattinam, Thanjavur and Thiruv- arur in the state of Tamilnadu.
Circle Head, Indian Bank, Circle Office, Lucknow.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Agra, Aligarh, Allahabad, Bareilly, Bulandshahr, Ghaziabad, Kanpur City, Lucknow, Mathura, Meerut, Mirzapur, Moradabad, Muzaffarnagar, Saharanpur, Shajahanpur and Varanasi in the state of Uttar Pradesh.
	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Dehra Dun and Haridwar in the State of Uttaranchal.
Circle Head, Indian Bank, Circle Office, Madurai.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Dindugal, Madurai, Ramanathapuram, Sivaganga and Theni in the state of Tamilnadu.
Circle Head, Indian Bank, Circle Office, Mumbai.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Greater Mumbai and Thane in the state of Maharashtra.
Circle Head, Indian Bank, Circle Office, New Delhi.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Delhi in the state of Delhi.
	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Bhopal, Dewas, Gwalior, Indore, Jabalpur, Ratlam, Sagar, Sehore, Ujjain in the state of Madhya Pradesh.
Circle Head, Indian Bank, Circle Office, Patna.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the the districts of Aurangabad, Bhagalpur, Bhojpur, Darbhanga, Gaya, Jehanabad, Muzaffarpur, Patna, Samastipur and Sitamarhi in the state of Bihar.
	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Bokaro, Dhanbad, Purbi Singhbhum and Ranchi in the state of Jharkhand.
Circle Head, Indian Bank, Circle Office, Pondicherry.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Karaikal and Pondicherry in the state of Pondicherry.
	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Villupuram in the state of Tamilnadu.
Circle Head, Indian Bank, Circle Office, Pune.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Ahmednagar, Akola, Amravati, Aurangabad, Chandrapur, Kolhapur, Nagpur, Nasik, Pune, Sangli, Satara, Solapur, and Yavatmal in the state of Maharashtra.
Circle Head, Indian Bank, Circle Office, Salem.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Namakkal and Salem in the state of Tamilnadu.
Circle Head, Indian Bank, Circle Office, Thanjavur.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Pudukottai and Thanjavur in the state of Tamilnadu.
Circle Head, Indian Bank, Circle Office, Tirunelveli.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Kanyakumari, Tirunelveli, Tuticorin and Virudunagar in the state of Tamilnadu.
Circle Head, Indian Bank, Circle Office, Tiruchy.	Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Karur, Perambalur and Tiruchirappalli in the state Tamilnadu.

Circle Head, Indian Bank,
Circle Office, Vellore.

Premises belonging to or taken on lease, by or on behalf of, the Indian Bank and situated in the districts of Tiruvannamalai and Vellore in the state of Tamilnad.

Circle Head, Indian Bank,
Circle Office, Vijayawada.

Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of Guntur, Kakinada and Prakasam in the state of Andhra Pradesh.

Circle Head, Indian Bank,
Circle Office, Visakhapatnam.

Premises belonging to or taken on lease by, or on behalf of, the Indian Bank and situated in the districts of East Godavari, Srikakulam, Vishakhapatnam, Vizianagaram and West Godavari, in the state of Andhra Pradesh.

Indian Bank and situated in the districts of Yanam in the state of Pondicherry.

[F. No. 13/10/2001-BOA]

D. CHOUDHURY, Under Secy.

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 25 अक्टूबर, 2001

का. आ. 3035.—केन्द्रीय सरकार निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियाँ का प्रयोग करते हुए, मैसर्स ब्रेक्स इंडिया लिमिटेड को, जिसका रजिस्ट्रीकृत कार्यालय 21, पैटुलम रोड, मद्रास—600002 पर स्थित है राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, उनके संकर्म ब्रेक डिब्बीजन, सोलिगूर, जिला वेल्लोर, पिन कोड 631102 में विनिर्मित आटोमोबाइल अतिरिक्त पुर्जों, संघटकों और उपसाधनों का निर्यात से पूर्व निरीक्षण करने के लिए निम्नलिखित शर्तों के अधीन रहते हुए, अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात् :—

(1) मैसर्स ब्रेक्स इंडिया लिमिटेड अपने संकर्मों से विनिर्मित आटोमोबाइल अतिरिक्त पुर्जों, संघटकों और उपसाधनों का निर्यात से पूर्व निर्यात निरीक्षण अभिकरण, मद्रास के संयुक्त निदेशक से अनुरोध पत्र के किसी अधिकारी के तकनीकी नियंत्रण में निरीक्षण करवाएगा और इस प्रयोजन के लिए मैसर्स ब्रेक्स इंडिया लिमिटेड, निर्यात निरीक्षण अभिकरण, मद्रास को अपनी ब्रेक्स डिब्बीजन, सोलिगूर, जिला वेल्लोर, पिनकोड 631102, में निर्यातित मर्च के पानपर्यन्त निःशुल्क मूल्य के 0.1 प्रतिशत दर पर कोई रकम न्यूनतम दो हजार और पाँच सौ रुपए तथा अधिकतम एक लाख रुपए के अधीन रहते हुए सदन करेगा।

(2) मैसर्स ब्रेक्स इंडिया लिमिटेड इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निदेशों द्वारा आबद्ध होगी जो निदेशक (निरीक्षण और

क्वालिटी नियंत्रण) द्वारा समय-समय पर दिए जाएंगे।

स्पष्टीकरण:—इस अधिसूचना के प्रयोजन के लिए “आटोमोबाइल अतिरिक्त पुर्जा संघटक और उपसाधन” से आटोमोबाइल और ट्रेलर में प्रयुक्त विनिर्मित उत्पाद (चाहे वे यान से संबद्ध हो या नहीं) अभिप्रेत हैं इसके अंतर्गत वे भी हैं जो मूल उत्पाद अर्थात् ब्रेक्स समन्वजन, मास्टर मिलेंडर, व्हील मिलेंडर, उनके पुर्जों और मरम्मत किटों के प्रतिस्थापन के रूप में प्रयुक्त किए जाते हैं।

[फा. सं 5/9/2001-ईआईएंडईपी]

राज सिंह, उपा सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 25th October, 2001

S. O. 3035. -In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises M/s Brakes India Limited having their registered Office at 21, Patulloups Road, Madras-600002 as an agency, for a period of three years from the date of publication of this notification in this Official Gazette, for inspection of automobiles spares components and accessories manufactured at their works Brake Division, Sholinghur, Vellore District, Pin Code 631102, prior to export, subject to the following conditions, namely :

(1) M/s Brakes India Limited, shall carry out inspection of automobiles spares components and accessories manufactured at their works prior to export and

the technical control of an officer not below the rank of Joint Director, Export Inspection Agency, Madras and for this purpose M/s. Brakes India Limited shall pay to the Export Inspection Agency, Madras an amount at the rate of 0.1 per cent of F.O.B. (Free on Board) value of the items exported from their unit of Brakes Division, Sholinghur, Vellore District, Pin Code 631102, subject to a minimum of rupees two thousand and five hundred and maximum of rupees one lakh in a year.

directions as the Director (Inspection and Quality Control) may give to it from time to time.

Explanation :---For the purpose of this notification, "automobiles spares components and accessories" means the manufactured products used in automobiles and trailers (whether attached to the vehicle or not) including those used as replacement parts for the original products, viz. brakes assembly, master cylinder, wheel cylinder, their parts and repair kits.

(2) M/s. Brakes India Limited in the performance of its function under this notification shall be bound by such

[F. No. 5/9/2001-EI&EP]

RAJ SINGH, Deputy Secy.

उपभोक्ता मामले और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली 25 अक्तूबर, 2001

का.आ. 3036.--भारतीय मानक ब्यूरो नियम 1987 के नियम, 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस/जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिये गये हैं वे स्थापित हो गये हैं :--

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक अतिरिक्त भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 784 : 2001—पूर्व-प्रचलित कक्रीट पाईप (विशेष सहायक -- सहित) विशिष्ट (दूसरा पुनरीक्षण)	आई एस 784 : 1978	2001-02-28
2.	आई एस 1866 : 2000--विद्युत उपकरण में विद्युत गैरक खनिज तेल के पर्यवेक्षण एवं अनुरक्षण मार्ग दिशिका (तीसरा पुनरीक्षण)	आई एस 1866 : 1983	2000-12-31
3.	आई एस 1885 (भाग 84) : 2001--विद्युत तकनीकी शब्दावली भाग 84 अग्नि परीक्षण		2001-02-28
4.	आई एस 2831 : 2001--निम्नतम्यता के संरचना इस्पात में पुनर्वर्धन हेतु कार्बन इस्पात के ठलवा ब्रिसेट ब्लूम व ब्लैक विशिष्ट (तीसरा पुनरीक्षण)	आई एस 2831 : 1975	2001-01-31
5.	आई एस 3626 : 2001 लॉक कुंडली वेरिफाई तारे--विशिष्ट (दूसरा पुनरीक्षण)	आई एस 3626 : 1978	2001-01-31

(1)	(2)	(3)	(4)
6. आई एम 4454(भाग 1) : 2001--यांत्रिक स्प्रिंग के लिये इस्पात के तार--विशिष्ट भाग 1 अतप्त कर्पित अमिश्रित इस्पात तार (तीसरा पुनरीक्षण)	आई एम 4454(भाग 1) : 1981	2001-03-31	
7. आई एम 4454(भाग 2) : 2001--यांत्रिक स्प्रिंग के लिये इस्पात के तार--विशिष्ट भाग 2 तेल कठोरित व नमित इस्पात के तार (दूसरा पुनरीक्षण)	आई एम 4454(भाग 3) : 1975	2001-02-28	
8. आई एम 4454(भाग 4) : 2001--यांत्रिक स्प्रिंग के लिये इस्पात के तार--विशिष्ट भाग 4 स्टेनलेस इस्पात तार (दूसरा पुनरीक्षण)	आई एम 4454(भाग 4) : 75	2001-03-31	
9. आई एम 5309 : 2001--कुक्कुट पालन उपकरण ब्रडर्स --विशिष्ट (दूसरा पुनरीक्षण)	आई एम 5309(भाग 1 व 2) : 1987	2001-02-28	
10. आई एम 5509 : 2000--अग्निरोधी प्लाईवुड--विशिष्ट (दूसरा पुनरीक्षण)	आई एम 5509 : 1980	2000-01-31	
11. आई एम 6044(भाग 1) : 2000--द्रवित पेट्रोलियम गैस भंडारण सयंत्रों की रीति संहिता भाग 1 वाणिज्यिक तथा औद्योगिक सिलिंडर संयंत्र (पहला पुनरीक्षण)	आई एम 6044(भाग 1) : 1971	2000-12-31	
12. आई एम 6603 : 2001--स्टेनलेस स्टील की छड़े और प्लेट्स--विशिष्ट (पहला पुनरीक्षण)	आई एम 6603 : 1972	2000-01-31	
13. आई एम 6954 : 2001--इलेक्ट्रो-प्रकुरिटक्स--प्राक्टेव बेड और प्रेक्षक--प्राक्टेव-बेड फिल्टर (पहला पुनरीक्षण)	आई एम 6964 : 1973	2001-02-28	
14. आई एम 8951 : 2001 उच्च कार्बन युक्त छोड़ी के उत्पादन हेतु इस्पात के दलवा ब्रिलेट इगाट्स, ब्रिलेट और ब्लूम--विशिष्ट (पहला पुनरीक्षण)	आई एम 8951 : 1978	2001-01-31	
15. आई एम 9081 : 2001--स्वचल वाहन हवा भरे टायरों के लिये वायु एवं वायु सहायक अंग--विशिष्ट (तीसरा पुनरीक्षण)	आई एम 9081 : 1992	2001-01-31	
16. आई एम 9127(भाग 1) : 2001--कोयले के सज्जतीय शील विश्लेषण की पद्धतियां भाग 4 बिटुमनी कोयले का सूक्ष्म-निर्धो टाईप सघटन ज्ञात करना		2001-02-28	
17. आई एम 9471(भाग 7) : 2000 माड्युली श्रद्ध : अंग हड्डी घटक विशिष्ट भाग 7 हड्डी धड़, टखना व घटना (ऊपरी व निम्न)		2000-12-31	
18. आई एम 9775 : 2000 कार्बाइड चपटे चोकोर तथा गाल--आयाम (पहला पुनरीक्षण)	आई एम 9775 : 1981	2000-12-31	
19. आई एम 9806 : 2001--खारा पदार्थों के समर्थन में आने वाले चीनी मिट्टी के भाँडों, काबाभ ऊनमल के भाँडों, कांच के भाँडों और कांच चीनी मिट्टी के भाँडों से निकलने वाले विपैले पदार्थों के परीक्षण की पद्धतियां और उनकी अनुमत सीमाएं (पहला पुनरीक्षण)	आई एम 9806 : 1981	2001-01-31	

1	2	3	4
20.	आई एम 9828 : 2001—सुरक्षा वायुमार्गों के डिज़ाइन विनिर्देश (पहला पुनरीक्षण)	आई एम 9828 : 1981	2001-02-28
21.	आई एम 9835 (भाग 1) : 2001—श्रेणी 1 संधारित्र हेतु पावर प्रणाली भाग 1 सामान्य कार्यकारिता, परीक्षण और रेटिंग सुरक्षा अपेक्षाएं—संस्थापन हेतु मार्गदर्शन (पहला पुनरीक्षण)	आई एम 9835 : 1981	2001-01-31
22.	आई एम 9873 (भाग 1) : 2001 स्त्रियों की सुरक्षा हेतु अपेक्षाएं भाग 1 सुरक्षा रूपी यांत्रिक और भौतिक गुणधर्म (पहला पुनरीक्षण)	आई एम 9873 (भाग 1) : 1981	2001-02-28
23.	आई एम 10343 : 1999—सामान्य अंतःप्रयोगों के लिये कार्बन और अन्य मिश्र ड्रिफ्ट निवेश ड्राफ्ट—विनिर्देश (दूसरा पुनरीक्षण)	आई एम 10343 : 1989	1999-08-31
24.	आई एम 11377 : 2001—सौंदर्य प्रसाधनों के स्वच्छता पूर्वक निर्माण हेतु मार्गदर्शी सिद्धान्त (पहला पुनरीक्षण)	आई एम 11377 : 1985	2001-03-31
25.	आई एम 11652 : 2000—वस्त्रादि सीमेंट भरने के द्वारा उच्च घनत्व पॉलीइथाइलीन (एचडीपीई) पॉली-प्रोपलीन (पीपी) विनिर्देश (दूसरा पुनरीक्षण)	आई एम 11652 : 1992	2000-11-30
26.	आई एम 12082 (भाग 2) : 2001—एम्बेस्टास उत्सर्जन का नियंत्रण सिफारिशें भाग 2 एम्बेस्टास अयस्क की मिलिंग	—	2001-01-31
27.	आई एम 12433 (भाग 2) : 2001 अस्पताल आयोजना हेतु आधारभूत अपेक्षाएं (भाग 2) 100 बिस्तरों तक का अस्पताल	—	2001-01-31
28.	आई एम 13360 (भाग 4/खंड 1) : 2000 प्लास्टिक परीक्षण पद्धतियां भाग 4 रियोलॉजिकल गुणधर्म खंड 1 ताप संचयन गलन प्रवाह दर (पहला पुनरीक्षण)	आई एम 13360 (भाग 4) खंड 1 1995	2000-12-31
29.	आई एम 13360 (भाग 5/खंड 14) : 2001 प्लास्टिक परीक्षण पद्धतियां भाग 5 यांत्रिक गुणधर्म खंड 14 बारकोल अंकित के द्वारा दृढ़ प्लास्टिक का दस्तुन कठोरता	—	2001-01-31
30.	आई एम 13360 (भाग 6/खंड 6) : 2001—प्लास्टिक—परीक्षण पद्धतियां भाग 6 तापीय गुणधर्म खंड 6 आक्सीजन सूचकांक द्वारा ज्वलनशीलता निर्देश (पहला पुनरीक्षण)	आई एम 13360 (भाग 6/खंड 6) 1994	2001-01-31
31.	आई एम 13360 (भाग 6/खंड 19) : 2001—प्लास्टिक—परीक्षण पद्धतियां भाग 6 तापीय गुणधर्म खंड 19 आक्सीजन सूचकांक निर्देशन द्वारा ज्वलनशीलता—परिग्रह ताप परीक्षण	—	2001-01-31
32.	आई एम 13360 (भाग 6/खंड 20) : 2001—प्लास्टिक—परीक्षण पद्धतियां भाग 6 तापीय गुणधर्म खंड 20 आक्सीजन सूचकांक निर्देशन द्वारा ज्वलनशीलता—उत्थापित ताप परीक्षण	—	2001-02-28
33.	आई एम 13360 (भाग 9/खंड 8) : 2001—प्लास्टिक—परीक्षण पद्धतियां भाग 9 प्रकाशित गुणधर्म खंड 8 प्लास्टिक की चट्टानों की पारदर्शिता	—	2001-01-31

1	2	3	4
34	आई एम 13360 (भाग 9/खंड 9) : 2001—प्लास्टिक— परीक्षण पद्धतियां भाग 9 प्रकाशित गुणधर्म खंड 9 प्लास्टिक पीन सूचकांक का ज्ञान करना	—	2001-02-28
35	आई एम 13360 (भाग 10/खंड 4) : 2001—प्लास्टिक— परीक्षण पद्धतियां भाग 10 थर्मोसेटिंग गुणधर्म खंड 4 अभि- क्रियात्मक थर्मोसेटिंग रेजिन का जैल टाइम एवं शिखर एक्सो- थर्मिक ताप	—	2001-01-31
36	आई एम 13360 (भाग 11/खंड 5) : 2001—प्लास्टिक— परीक्षण पद्धतियां भाग 11 विशेष गुणधर्म खंड 5 श्वेत बिन्दु ताप तथा न्यूनतम फिल्म-रूपण ताप का निर्धारण	—	2001-02-28
37	आई एम 14206 (भाग 2) : 2001—प्लाई वुड प्रबलित रबड़ बाहक पट्टे के स्थल पर गैर-यांत्रिक जोड़ की रीति संहिता भाग 2 ठंडा बल्कनीकरण	—	2001-01-31
38	आई एम 14219 : 2001—चित्र शल्यक्रिया अन्तरीक्षण— निर्जम, एकल प्रयोग के लिए हाइड्रोमिफैल्म शट और घटक (पहला पुनरीक्षण)	आई एम—14219 : 1994	2001-02-28
39	आई एम 14773 (भाग 5) : 2001—प्रद्युक्ती मशीन का यांत्रिक कम्पत—धूर्णी शैफ्ट पर मापन और मूल्यांकन कमीटी भाग 5 जल विद्युत जनित एवं पम्पिंग संयंत्र में मशीन सेट	—	2001-02-28
40	आई एम 14836 (भाग 1) : 2000—देश और उनके उप- भागों के नामों को दर्शाने वाले कोड भाग 1 देशों के कोड	—	2000-10-31
41	आई एम 14862 : 2000—फाइबर सीमेंट की सघाट चादरें— विशिष्ट	—	2000-12-31
42	आई एम 14865 : 2001—बढ़ते जा सकने वाले इंसुलेंटों के लिए प्रवेदन दण्ड—आयाम	—	2001-02-28
43	आई एम 14866 : 2000—बढ़ते जा सकने वाले इंसुलेंटों के लिए एकल प्वाइंट वाले टर्मिंग और कॉपिंग औजार धारक— आयाम	—	2000-12-31
44	आई एम 14871 : 2000—फाइबर प्रबलित सीमेंट उत्पाद— छत व कनैडिंग के लिए लम्बी नालीदार या असमान काट की चादरें—विशिष्ट	—	2000-12-31
45	आई एम 14877 (भाग 1) : 2000—द्रवचालित प्रेस— स्ट्रुट मार्टिडिड कालम/सी-फ्रेम टाटप भाग 1 ज्यामितीय परि- शुद्धता का परीक्षण चार्ट	—	2000-12-31
46	आई एम 14878 : 2000—प्लेट मोड़ने की मशीनों का परी- क्षण चार्ट	—	2000-11-30
47	आई एम 14891 : 2001—मैकेरल—नाजीफोजन तथा डिब्बा बन्द—विशिष्ट	आई एम 2420 : 1985 3849 : 76, 6032 : 1971, 6033 : 1971, 9312 : 1979	2001-01-31
48	आई एम 14890 : 2001—मार्डिन—नाजी, फोजन तथा डिब्बा बन्द—विशिष्ट	आई एम 2421 : 1981, 6677 : 72, 8652 : 1977, 8653 : 1977, 9750 : 1981, 10761 : 1983	2001-02-28

1	2	3	4
49.	आईएस 14893 : 2001—स्थूल (पाइल) की अविनाशी/अखण्डता परीक्षण (एनडीटी)—मार्ग निर्देश	—	2001-01-31
50.	आईएस 14896 : 2001—व्यक्तिगत कंप्यूटर—विशिष्ट	—	2001-02-28
51.	आईएस 14898 : 2001—चमड़े के इको मापक—विशिष्ट	—	2001-01-31
52.	आईएस 14901 (भाग 1) : 2001—प्रदूषक यक्तियाँ—विविक्त यक्तियाँ एवं समाकलित परीपथ भाग 1 सामान्य	—	2001-01-31
53.	आईएस 14901 (भाग 7) : 2001—प्रदूषक यक्तियाँ—विविक्त यक्तियाँ एवं समाकलित परीपथ भाग 7 विद्युत ट्रॉजिस्टर	—	2001-02-28
54.	आईएस 14902 (भाग 1) : 2001—उच्च वोल्टता डी.सी. (एच.वी.डी.सी.) प्रणाली की कार्यकारिता भाग 1 अपरिवर्ती अवस्था की स्थितियाँ	—	2001-01-31
55.	आईएस 14903 : 2001—प्रयोगशाला में उपयोगी जंतुओं का परिवहन—रीति संहिता	—	2001-01-31
56.	आईएस 14904 : 2001—पालतू पशुओं का परिवहन—रीति संहिता	—	2001-01-31
57.	आईएस 14905 : 2001—जलपोत पर मशीनरी नियंत्रण कक्षों का वातानुकूलन और संवातन—डिजाइन परिस्थितियाँ और परिकल्पनों के आधार	—	2001-02-28
58.	आईएस 14906 : 2001—जलपोत पर स्त्रील हाउस का वातानुकूलन और संवातन—डिजाइन परिस्थितियाँ और परिकल्पनों के आधार	—	2001-02-28
59.	आईएस 14908 : 2001—यांत्रिक कम्पन एवं प्रघात—विषा में मानव शरीर की यांत्रिक पारगमन समता	—	2001-01-31
60.	आईएस 14909 : 2001—जलपोत निर्माण डीजल इंजन युक्त जलपोतों में इंजन कक्ष का वातानुकूलन और संवातन—डिजाइन आवश्यकताएँ और परिकल्पनों के आधार	—	2001-01-31
61.	आईएस 14910 : 2001—यांत्रिक कम्पन एवं प्रघात—मनुष्य का सम्पर्क—जैव गति की समन्वय पद्धति	—	2001-02-28
62.	आईएस 14911 (भाग 1) : 2001—उच्च वोल्टता दिष्ट धारा (एच.वी.डी.सी.) पावर संचारण हेतु थ्राइस्टर वाल्व भाग 1 विद्युतीय परीक्षण	—	2001-01-31
63.	आईएस 14912 : 2001—डोर क्लोजर, कनसीलड टाइप (द्रव चालन द्वारा नियंत्रित) विशिष्ट	—	2001-03-31
64.	आईएस 14916 : 2001—यांत्रिक कम्पन और झटका—गति बिन्दु पर मनुष्य के हाथ की बाहों की व्यवस्था का मुक्त, यांत्रिक प्रतिबाधा	—	2001-01-31
65.	आईएस 14924 : 2001—संश्लेषित क्वाटर्स क्रिस्टल—विशिष्टियाँ तथा प्रयोग के लिए मार्गदर्शिका	आईएस 9709 : 1978, 8899 : 1978, 10189 : 1982	2001-02-28

इन भारतीय मानकों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली 110 002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकता, चन्नई, चण्डीगढ़, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबूर, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[सं. सीएमडी : 1/13:2]

सतीश चन्द्र, अपर सहायक निदेशक

MINISTRY OF CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 25th October, 2001

S.O. 3036. —In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No. & Year of the Indian Standards Established	No. & Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)
1. IS 784:2001—Prestressed Concrete Pipes (Including Specials)—Specification (Second Revision)	IS 784:1978	2001-02-28
2. IS 1866:2000—Code of Practice For Electrical Maintenance and Supervision of Mineral Insulating Oil In Equipment (Third Revision)	IS 1866:1983	2000-12-31
3. IS 1885 (Part 84) : 2001—Electrotechnical Vocabulary Part 84 : Fire Tests	—	2001-02-28
4. IS 2831:2001—Carbon Steel Cast Billet Ignots, Billets, Blooms And Slabs For Re-Rolling Into Low Tensile Structural Steel—Specification (Third Revision)	IS 2831:1975	2001-01-31
5. IS 3626:2001—Locked Coil Winding Ropes—Specification (Second Revision)	IS 3626:1978	2001-01-31
6. IS 4454 (Part 1) : 2001—Steel Wire For Mechanical Springs—Specification Part 1 : Cold Drawn Unalloyed Steel Wire (Third Revision)	IS 4454 (Part 1):1981	2001-03-31
7. IS 4454 (Part 2) : 2001—Steel Wire For Mechanical Springs—Specification Part 2 : Oil Hardened And Tempered Steel Wire (Second Revision)	IS 4454 (Part 2) : 1975 IS 4454 (Part 3) : 1975	2001-02-28
8. IS 4454 (Part 4) : 2001—Steel Wire For Mechanical Springs—Specification Part 4 : Stainless Steel Wire (Second Revision)	IS 4454 (Part 4) : 1975	2001-03-31

(1)	(2)	(3)	(4)
9.	IS 5309 : 2001—Poultry Farming Equipment Brooders—Specification (Second Revision)	IS 5309 (Part 1 & 2) : 1987	2001-02-28
10.	IS 5509 : 2000—Fire Ret Ardent Plywood—Specification (Second Revision)	IS 5509:1980	2000-10-31
11.	IS 6044 (Part 1) : 2000—Code of Practice For Liquefied Petroleum Gas Storage Installations Part 1 : Commercial And Industrial Cylinder Installations (First Revision)	IS 6044 (Part 1) : 1971	2000-12-31
12.	IS 6603 : 2001—Stainless Steel Bars And Flats—Specification (First Revision)	IS 6603:1972	2000-01-31
13.	IS 6964:2001—Electroacoustics—Octave—Band and Fractional— Octave—Band Filters (First Revision)	IS 6964:1973	2001-02-28
14.	IS 8951:2001—Steel Cast Billet Ingots, Billeets And Blooms For Production of High Carbon Steel Wire—Rods—Specification (First Revision)	IS 8951:1978	2001-01-31
15.	IS 9081:2001—Automotive Vehicles—Valve Accessories For Pneumatic Tyres—Specification (Third Revision)	IS 9801:1992	2001-01-31
16.	IS 9127 (Part 4):2001—Methods For Petrographic Analysis of Coal Part 4 : Method Of Determining Microlithotype, Carbominerite And Minerite Composition	—	2001-02-28
17.	IS 9471 (Part 7) : 2000—Modular Lower Limb Orthotic Components Specification Part 7: Orthotic Joint Bars, Ankle And Knee (Upper And Lower)	—	2000-12-31
18.	IS 9775:2000—Carbide Flats, Squares And Rounds—Dimensions (First Revision)	IS 9775:1981	2000-12-31
19.	IS 9806:2001—Methods Of Tests For And Permissible Limits Of Toxic Materials Released From Ceramicware, Vitreous Enamel- ware Glassware And Glass Ceramicware In Contact With Food (First Revision)	IS 9806:1981	2001-01-31
20.	IS 9828:2001—Portable Pneumatic Sanders—Specification (First Revision)	IS 9829:1981	2001-02-28
21.	IS 9835 (Part 1): 2001—Series Capacitors For Power Systems Part 1 : General Performance, Testing And Rating—Safety Requirements—Guide For Installation (First Revision)	IS 9835:1981	2001-01-31
22.	IS 9873 (Part 1): 2001—Safety Requirements For Toys Part 1 : Safety Aspects Related To Mechanical And Physical Properties (First Revision)	IS 9873 (Part 1):1981	2001-02-28
23.	IS 10343:1999—Carbon And Low Alloy Steel Investment Castings For General Applications—Specification— (Second Revision)	IS 10343:1989	1999-08-31
24.	IS 11377:2001—Guidelines For Hygienic Manufacture of Cosmetics (First Revision)	IS 11377 : 2001	2001-03-31

(1)	(2)	(3)	(4)
25. IS 11652:2000—Textiles—Woven Sacks For Packing Cement—High Density Polyethylene (HDPE)/Polypropylene (PP)—Specification (Second Revision)	IS 11652:1992		2000-11-30
26. IS 12082 (Part 2) : 2001—Control of Asbestos Emission—Recommendations Part 2: Milling of Asbestos Ore	—		2001-01-31
27. IS 12433 (Part 2) : 2001—Basic Requirements For Hospital Planning Part 2: Up To 100 Bedded Hospital	—		2001-01-31
28. IS 13360 (Part 4/Sec 1) : 2000—Plastics—Methods of Testing Part 4: Rheological Properties Section 1: Determination of The Melt Mass-Flow Rate (MFR) And The Melt Volume-Flow Rate (MVR) of Thermoplastics (First Revision)	IS 13360 (Pt. 4/Sec 1) : 1995		2000-12-31
29. IS 13360 (Part 5/Sec 14) : 2001—Plastics—Methods of Testing Part 5: Mechanical Properties Section 14: Determination of Indentation Hardness of Rigid Plastic By Means of Barcol Impressor	—		2001-01-31
30. IS 13360 (Part 6/Sec 6) : 2001—Plastics—Methods of Testing Part 6: Thermal Properties Section 6: Flammability By Oxygen Index—Guidance (First Revision)	IS 13360 (Pt 6/Sec 6):1994		2001-01-31
31. IS 13360 (Part 6/Sec 19) : 2001—Plastics—Methods of Testing Part 6: Thermal Properties Section 19: Flammability By Oxygen Index—Ambient Temperature Test	—		2001-01-31
32. IS 13360 (Part 6/Sec 20) : 2001—Plastics—Methods of Testing Part 6 : Thermal Properties Section 20 : Flammability by Oxygen Index—Elevated Temperature Test.	—		2001-02-28
33. IS 13360 (Part 9/Sec 8) : 2001 Plastics—Methods of Testing Part 9 : Optical Properties Section 8 : Determination of Transparency of Plastic Sheeting.	—		2001-01-31
34. IS 13360 (Part 9/Sec 9) : 2001—Plastics—Methods of Testing Part 9 : Optical Properties Section 9 : Determination of Yellow Index of Plastics.	—		2001-02-28
35. IS 13360 (Part 10/Sec 4) : 2001—Plastics—Methods of Testing Part 10 : Thermosetting Properties Section 4 : Determination of Gel Time and Peak Exothermic Temperature of Reacting Thermosetting Resins.	—		2001-01-31

(1)	(2)	(3)	(4)
36. IS 13360 (Part 11/Sec 5) : 2001—Plastics—Methods of Testing Part 11 : Special Properties Section 5 : Determination of White Point Temperature and Minimum Film-forming Temperature.	—		2001-02-28
37. IS 14206 (Part 2) : 2001—On-site Non-Mechanical Jointing of Plied Textile Reinforced Rubber Conveyor Belting—Code of Practice Part 2 : Cold Vulcanizing.	—		2001-01-31
38. IS 14219 : 2001—Neurosurgical Implants—Sterile, Single-Use Hydrocephalus Shunts and Components (First Revision)	IS 14219 : 1994		2001-02-28
39. IS 14773 (Part 5) : 2001—Mechanical Vibration of Non- Reciprocating Machines—Measurements on Rotating Shafts and Evaluation Criteria Part 5 : Machine Sets in Hydraulic Power Generating and Pumping Plants	—		2001-02-28
40. IS 14836 (Part 1) : 2000—Codes for the Representation of names of Countries and their Subdivisions Part 1 : Country Codes	—		2000-10-31
41. IS 14862 : 2000—Fibre Cement Flat Sheets—Specification	—		2000-12-31
42. IS 14865 : 2001—Boring Bars for Indexable Inserts—Dimensions	—		2001-02-28
43. IS 14866 : 2000—Single Point Tool Holders For Turning and Copying for Indexable Inserts—Dimensions	—		2000-12-31
44. IS 14871 : 2000—Products in Fibre Reinforced Cement—Long Corrugated or Asymmetrical Section Sheets and Fittings for Roofing and Cladding—Specification	—		2000-12-31
45. IS 14877 (Part 1) : 2000—Hydraulic Presses—Straight Sided Column/C-Frame Type Part 1 : Test Chart for Geometrical Accuracy	—		2000-12-31
46. IS 14878 : 2000—Test Chart for Plate Bending Machines	—		2000-11-30
47. IS 14890 : 2001—Sardines—Fresh, Frozen and Canned— Specification	IS 2421 : 1981, 6677 : 72 8652 : 77, 8653 : 1977, 9750 : 1981, 10761 : 1983		2001-02-28
48. IS 14891 : 2001—Mackerel—Fresh, Frozen and Canned— Specification	IS 2420 : 1985, 3849 : 1976, 6032 : 71, 6033 : 71, 9312 : 79		2001-01-31

(1)	(2)	(3)	(4)
49.	IS 14893 : 2001—Non-Destructive Integrity Testing of Piles (NDT)—Guidelines	—	2001-01-31
50.	IS 14896 : 2001—Personal Computer—Specification	—	2001-02-28
51.	IS 14898 : 2001—Eco Criteria for Finished Leather—Specification	—	2001-01-31
52.	IS 14971 (Part 1) : 2001—Semiconductor Devices—Discrete Devices and Integrated Circuits	—	2001-01-31
53.	IS 14901 (Part 7) : 2001—Semiconductor Devices—Discrete Devices and Integrated Circuits Part 7 : Bipolar Transistors	—	2001-02-28
54.	IS 14902 (Part 1) : 2001—Performance of High-Voltage D.C. (HVDC) Systems Part 1 : Steady State Conditions	—	2001-01-31
55.	IS 14903 : 2001—Transport of Laboratory Animals—Code of Practice	—	2001-01-31
56.	IS 14904 : 2001—Transport of Livestock—Code of Practice	—	2001-01-31
57.	IS 14905 : 2001—Air-Conditioning and Ventilation of Machinery Control-Rooms on Board Ships—Design conditions and Basis of Calculations	—	2001-02-28
58.	IS 14906 : 2001—Air-Conditioning and Ventilation of Wheel-house on Board Ships—Design Conditions and Basis of Calculations	—	2001-02-28
59.	IS 14908 : 2001—Mechanical Vibration and Shock—Mechanical Transmissibility of the Human Body in the Z Direction	—	2001-01-31
60.	IS 14909 : 2001—Shipbuilding—Engine-Room Ventilation in Diesel Engined Ships—Design Requirements and Basis of Calculations	—	2001-01-31
61.	IS 14910 : 2001—Mechanical Vibration and Shock—Human Exposure—Biodynamic Coordinate Systems	—	2001-02-28
62.	IS 14911 (Part 1) : 2001—Thyristor Valves for High Voltage Direct Current (HVDC) Power Transmission Part 1 : Electrical Testing	—	2001-01-31
63.	IS 14912 : 2001—Door Closers, Concealed Type (Hydraulically Regulated)—Specification	—	2001-03-31

(1)	(2)	(3)	(4)
64. IS 14916 : 2001—Mechanical Vibration and Shock-Free, Mechanical Impedance of the Human Hand-Arm System at the Driving Point	—		2001-01-31
65. IS 14924 : 2001—Synthetic Quartz Crystal—Specifications and Guide to the Use.	IS 9709 : 1978, 8899 : 1978, 10184 : 1982		2001-02-28

Copy of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi—110 002 and Regional Offices : New Delhi, Calcutta, Chandigarh, Chennai, Mumbai, and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[No. CMD-1/13 : 2]

SATISH CHANDER, Addl. Director General

नई दिल्ली, 25 अक्तूबर, 2001

का.भा. 3037.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(कों) में संशोधन किया गया है/ किये गये हैं।

अनुसूची

क्रम सं.	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1. आई एस 1391 (भाग 1) : 1992		संशोधन सं. 1, अक्तूबर, 2000	2000-10-31
2. आई एस 3177 : 1999		संशोधन सं. 1, दिसम्बर, 2000	2000-12-31
3. आई एस 8615 : 1993		संशोधन सं. 1, दिसम्बर, 2000	2000-12-31
4. आई एस 10350 : 1999		संशोधन सं. 1, फरवरी, 2001	2001-02-28
5. आई एस 10805 : 1996		संशोधन सं. 2, दिसम्बर, 2000	2000-12-31
6. आई एस 12650 : 1997		संशोधन सं. 2, दिसम्बर, 2000	2000-12-31

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[सं. सीएमडी-1/13 : 5]

सतीश चन्द्र, अपर महानिदेशक

New Delhi, the 25th October, 2001

S.O. 3037.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules 1987, the Bureau of Indian Standards hereby notified that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued.

Sl. No.	No. & Year of the Indian Standards	No. & Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 1391 (Part 1) : 1992	Amendment No. 1 October 2000	2000-10-31
2.	IS 3177 : 1999	Amendment No. 1 December 2000	2000-12-31
3.	IS 8615 : 1993	Amendment No. 1 December 2000	2000-12-31
4.	IS 10350 : 1999	Amendment No. 1 February 2001	2000-02-28
5.	IS 10805 : 1986	Amendment No. 2 December 2000	2000-12-31
6.	IS 12650 : 1997	Amendment No. 2 December 2000	2000-12-31

Copy of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi—110 002 and Regional Offices : New Delhi, Calcutta, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[No. CMD-1/13 : 5]

SATISH CHANDER, Add. Director General

(खाद्य और सार्वजनिक वितरण विभाग)

नई दिल्ली, 29 अक्टूबर 2001

क्र.आ. 3038.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) निधम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता नामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नि २१० ध. अ. सं. ६६

निगम के त्रिन्तलिखित कार्यालय, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्व ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है

भारतीय खाद्य निगम,
केन्द्रीय प्रशिक्षण संस्थान,
गुडगाव (हरियाणा)

[सं. ई.-11011/1/2001-हिन्दी]

रजनी राजदान, संयुक्त सचिव

**MINISTRY OF CONSUMER AFFAIRS, FOOD
AND PUBLIC DISTRIBUTION**

(Department of Food and Public Distribution)

New Delhi, the 29th October, 2001

S.O. 3038.—In pursuance of Sub-Rule (4) of rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976 the Central Government hereby notifies the following office of Food Corporation of India under the administrative control of the Ministry of Consumer Affairs, Food and Pub-

lic Distribution (Department of Food and Public Distribution), where of more than 80% of staff have acquired the working knowledge of Hindi :

1. Food Corporation of India,
Central Training Institute,
Gurgaon (Haryana).

[No. E-11011/1/2001-Hindi]

RAJNI RAZDAN, Jt. Secy.

स्वाम्थ्य और परिवार कल्याण मंत्रालय

(स्वाम्थ्य विभाग)

नई दिल्ली, 15 अक्टूबर, 2001

का.प्र. 3038.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के बाद एतद्वारा उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :

उक्त प्रथम अनुसूची में 'राजीव गांधी यूनिवर्सिटी ऑफ हेल्थ साइंसेस, कर्नाटक के सामने "मान्यताप्राप्त आयुर्विज्ञान अर्हता" शीर्षक के अधीन 'मजिस्ट्रार आफ चिरुर्गआई (कार्डियो-थोरेसिस सर्जरी)' प्रविष्टि और 'पंजीकरण के लिये संक्षेपाक्षर' शीर्षक के अधीन उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्तःस्थापित किया जायेगा, अर्थात् :

मान्यताप्राप्त आयुर्विज्ञान अर्हता

पंजीकरण के लिए संक्षेपाक्षर

"आयुर्विज्ञान तथा अल्प विज्ञान स्नातक

एम. बी. बी. एस.

(यह अर्हता तभी मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी जब यह मई, 2001 में या उसके बाद प्रदान की गई हो)।

[सं. बी. 11015/4/2001-एम. ई. (नीति-I)]

पी. जी. कलावैरम्, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 15th October, 2001

S.O. 3039.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consultation with the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :

In the said First Schedule, against the Rajiv Gandhi University of Health Sciences, Karnataka, under the heading 'Recognised Medical Qualification' after the entry, 'Magistrar of Chirurgiae (Cardio-Thoracic Surgery)'

and the entry relating thereto under the heading 'Abbreviation for Registration', the following shall be inserted, namely :

Recognised medical qualification	Abbreviation for registration
"Bachelor of Medicine and Bachelor of Surgery	MBBS (This qualification shall be a recognised medical qualification when granted in or after May, 2001)".

[No. V.11015/4/2001-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

गहरी विकास और गरीबी उपशमन मंत्रालय

(सपदा निदेशालय)

नई दिल्ली, 7 नवम्बर, 2001

का.आ. 3040.—सरकारी रिहायशी आवास (दिल्ली में सामान्य पूल) आबंटन नियमावली 1963 के अनु. नि.-317-बी-2 के खण्ड (ख) के अनुसरण में राष्ट्रपति अगले आदेश होने तक वर्ष 2002 के अप्रैल माह के प्रथम दिन से शुरू होने वाले प्रवाही (Rolling) आबंटन वर्ष को अधिसूचित करते हैं।

[फा. स. 12035/8/01-नीति-II]

महेन्द्र सिंह, उपनिदेशक

MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION

(Directorate of Estates)

New Delhi, the 7th November, 2001

S.O. 3040.—In pursuance of Clause (b) of SR-317-B-2 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, the President hereby notify commencing of the Rolling Allotment Year on the 1st Day of April, 2002 till further orders.

[F. No. 12035/8/2001-Pol. II]

MAHENDRA SINGH, Dy. Director

नई दिल्ली, 7 नवम्बर, 2001

का.आ. 3041.—सरकारी रिहायशी आवास (दिल्ली में सामान्य पूल) आबंटन नियमावली 1963 के अनु. नि.-317-बी-2 के खण्ड (ख) के अनुसरण में राष्ट्रपति एतद्वारा वर्तमान आबंटन वर्ष की अवधि, जो कि वर्ष 2000 के जनवरी माह की पहली तारीख से 31-12-2001 तक थी, को दिनांक 31-3-2002 तक बढ़ाते हैं।

[फा. सं. 12035/14/99-नीति-2]

महेन्द्र सिंह, उपनिदेशक

New Delhi, the 7th November, 2001

S.O. 3041.—In pursuance of Clause (b) of SR-317-B2 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, the President hereby extends the period of current allotment year,

which commenced on 1st Day of January, 2000 to 31-12-2001, upto 31-3-2002.

[F. No. 12035/14/99-Pol. II]

MAHENDRA SINGH, Dy. Director

संचार मंत्रालय

(दूरसंचार विभाग)

(राजभाषा अनुभाग)

नई दिल्ली, 29 अक्टूबर, 2001

का.आ. 3042.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 (4) के अनुसरण में संचार मंत्रालय दूरसंचार विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालय को जिसमें 80 प्रतिशत में अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

मुख्य महाप्रबंधक दूरसंचार हरियाणा परिमंडल अम्बाला।
दूरसंचार जिला प्रबंधक, रिवाड़ी

[सं. ई.-11016/1/99-रा.भा.]

आर. डी. मासीवाल, निदेशक

MINISTRY OF COMMUNICATIONS

(Department of Telecommunications)

(Official Language Section)

New Delhi, the 29th October, 2001

S.O. 3042.—In pursuance of rule 10(4) of the Official Language (use for official purpose of the Union), rules, 1976 the Central Government hereby notifies the following office under the administrative control of Ministry of Communications, Department of Telecommunications whereof more than 80 per cent staff have acquired working knowledge of Hindi.

Chief General Manager (Telecom) Haryana Telecom
Circle, Ambala.

Telecom District Manager, Rewari.

[No. E-11016/1/99(O.L.)]

R. D. MASIWAL, Director

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 6 नवम्बर, 2001

क्रा. आ. 3043.— केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसार में, नीचे दी गई अनुसूची के स्तंभ (1) में उल्लिखित व्यक्तियों को, उक्त अनुसूची के स्तंभ (2) में वर्णित क्षेत्रों की बाबत कर्नाटक राज्य में अवस्थित विभिन्न उपभोक्ताओं को निर्यात के लिए गोवा के उत्तरी और दक्षिणी समुद्र-तट और आन्ध्र-प्रदेश की सरंचनाओं में मैसर्स गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कंपनी लिमिटेड (जी. टी. आई. सी. एल.) द्वारा, जिसका रजिस्ट्रीकृत कार्यालय आ. पी. एल. हाउस, तीसरा तल, 15 बालचन्द हीराचन्द्र मार्ग, बालार्ड इस्टेट, मुम्बई-400038 में है उसकी संवर्धन कंपनी अर्थात् मैसर्स रिलायरा इण्डस्ट्रीज लिमिटेड के खोज-ब्लाकों में उत्पादित प्राकृतिक गैस के परिवहन के लिए पाइपलाइन बिछाने के लिए उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है।

अनुसूची

	व्यक्तियों के नाम और पते	अधिकारिता का क्षेत्र
	(1)	(2)
1.	श्री अतुल कुमार तिवारी, जिला-कलेक्टर, जिला बेलगाम, कर्नाटक सरकार, मार्फत मैसर्स गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कंपनी आर. पी. एल. हाउस, तीसरा तल, 15 बालचन्द हीराचन्द्र मार्ग, बालार्ड इस्टेट, मुम्बई-400038	कर्नाटक राज्य में बेलगाम जिला।
2.	श्री राकेश सिंह, उप-कलेक्टर, जिला बीजापुर, कर्नाटक सरकार, मार्फत मैसर्स गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कंपनी आर. पी. एल. हाउस, तीसरा तल, 15 बालचन्द हीराचन्द्र मार्ग, बालार्ड इस्टेट, मुम्बई-400038	कर्नाटक राज्य में बीजापुर जिला।
3.	श्री एम. लक्ष्मी नारायण, जिला कलेक्टर, जिला गुलबर्गा, कर्नाटक सरकार, मार्फत मैसर्स गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कंपनी आर. पी. एल. हाउस, तीसरा तल, 15 बालचन्द हीराचन्द्र मार्ग, बालार्ड इस्टेट, मुम्बई-400038	कर्नाटक राज्य में गुलबर्गा जिला।

[फा. सं. एल-14014/9/01—जीपी]

म्यासी प्रिंट, निदेश

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 6th November, 2001

S. O. 3043.— in pursuance of clause (a) of section 2 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorise the persons mentioned in the column (1) of the Schedule given below to perform the functions of the competent authority under the said Act for laying of the pipeline by M/s Gas Transportation and Infrastructure Company Limited (GTICL) having its Registered Office at R.P.L. House, 3rd floor, 15, Walchand Hirachand Marg, Ballard Estate, Mumbai-400038 for transportation of natural gas produced in the exploration blocks of its promoter company, namely, M/s Reliance Industries Limited in Northern and Southern offshore of Goa and structures in Andhra Pradesh for distribution to various consumers located in the State of Karnataka in respect of the areas mentioned in column (2) of the said Schedule:

SCHEDULE

Name and Address of the persons	Areas of jurisdiction
(1)	(2)
(1) Shri Atul Kumar Tiwari, District Collector, Belgaum District, Government of Karnataka C/o M/s Gas Transportation and Infrastructure Company R.P.L. House, 3 rd Floor, 15, Walchand Hirachand Marg, Ballard Estate, Mumbai-400038.	District of Belgaum in Karnataka State.
(2) Shri Rakesh Singh, Deputy Collector, Bijapur District, Government of Karnataka C/o M/s Gas Transportation and Infrastructure Company R.P.L. House, 3 rd Floor, 15, Walchand Hirachand Marg, Ballard Estate, Mumbai-400038.	District of Bijapur in Karnataka State.
(3) Shri M Lakshmi Narayana, District Collector, Gulbarga District, Government of Karnataka C/o M/s Gas Transportation and Infrastructure Company R.P.L. House, 3 rd Floor, 15, Walchand Hirachand Marg, Ballard Estate, Mumbai-400038.	District of Gulbarga in Karnataka State.

[No. L-14014/9/01—GP]
SWAMI SINGH, Director

नई दिल्ली, 8 नवम्बर, 2001

का. आ. 3044.— केन्द्रीय सरकार को लोक हित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में विरमगाम से हरियाणा राज्य में पानीपत तक राजस्थान राज्य में चाकसू से होती हुई अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा सलाया—मथुरा पाइपलाइन प्रणाली के विरमगाम—चाकसू, चाकसू—पानीपत और चाकसू—मथुरा सेक्शनो के संवर्द्धन के कार्यान्वयन हेतु एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमें पाइपलाइन बिछाए जाने का प्रस्ताव है, और जो इस अधिसूचना से मंलग्न अनुसूची में वर्णित है उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ।

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितवद्ध है उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाने के संबंध में, श्री सुनील शर्मा, मध्य प्राधिकारी, सलाया—मथुरा पाइपलाइन (संवर्द्धन) परियोजना, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, 33, मुक्तानंद नगर, गोपालपुरा रोड—पास, जयपुर (राजस्थान) — को लिखित रूप में आक्षेप भेज सकेगा ।

अनुसूची

तहसील : मसूदा		जिला : अजमेर		राज्य : राजस्थान	
गाँव का नाम	खसरा सं.	क्षेत्रफल			वर्ग मीटर
		हेक्टेयर	एयर		
1	2	3	4	5	
काजा खेड़ा	2179	0	13	84	
	2178/1	0	12	93	
	2178/2	0	13	11	
	2163/3	0	04	72	
	2202	0	12	87	
	2163/7	0	20	68	
	2106	0	01	79	
	2103	0	02	29	
	2105	0	02	31	
	2104	0	04	50	
	2099	0	00	90	
	2111	0	01	51	
	2098	0	06	69	
	2112	0	03	71	
	2097	0	02	67	
	2096	0	02	41	
	2113/2	0	00	34	
	2074	0	00	20	
	2073	0	08	82	
	2081	0	02	88	
	2082	0	01	47	
	2083	0	07	41	
	2065	0	09	91	
	1945/2	0	10	62	
	1945/1	0	05	08	
	1946	0	10	55	
	919	0	08	57	
	1941	0	03	80	
	1940	0	06	18	
	1934/3	0	09	52	

1	2	3	4	5
केसरपुरा	697	0	00	20
	698/1	0	13	11
	696	0	01	81
	699	0	01	69
	706/1	0	03	17
	708	0	07	66
	709	0	04	68
	710	0	05	99
	711	0	01	49
	712	0	17	00
	790	0	03	09
	638	0	00	24
	634/2	0	00	40
	630	0	22	58
	487	0	02	73
	494	0	06	48
	493/1	0	14	93
	493/2	0	01	16
	413	0	05	11
	416	0	03	45
	412	0	09	29
	401	0	06	42
	397	0	02	34
	396	0	04	71
	395	0	01	33
	402	0	00	20
	394	0	14	16
	393	0	04	83
	392	0	04	18
	347	0	06	28
	345	0	04	99
	330	0	02	96
	328	0	06	28
	326	0	00	35
	325/1	0	02	10
	325/2	0	03	63
	309/1	0	00	43

1	2	3	4	5
	318/1	0	08	77
	316/1	0	07	39
	316/2	0	00	33
	315/1	0	05	48
	315/2	0	01	23
	312	0	00	24
	311	0	00	20
	313/1	0	02	88
	1091/1	0	05	11
	1092	0	03	15
	1093	0	01	74
	1094/1	0	06	15
	1095	0	01	70
	1097	0	01	37
	1099	0	03	86
खरवा	6848/1	0	11	91
	6852	0	02	96
	6850/1	0	06	76
	6834	0	09	40
	6836	0	09	32
	6835	0	01	09
	6837	0	08	72
	6826	0	02	13
	6825	0	01	20
	6824	0	04	55
	6752/2	0	00	20
	6752/1	0	11	87
	6765	0	07	40
	6763	0	04	19
	6762	0	08	17
	6756	0	01	91
	6761	0	02	95
	6758	0	00	20
	6759	0	04	81
	6286	0	10	75
	6285	0	04	68
	6290	0	00	40

1	2	3	4	5
	6275	0	14	25
	6274	0	05	39
	6266	0	08	88
	6267	0	03	18
	5946	0	00	20
	5947	0	07	72
	5943	0	04	30
	5948	0	00	20
	5949	0	04	56
	5934	0	05	08
	5935	0	00	62
	5926	0	04	41
	5925	0	02	06
	5924	0	02	19
	5923	0	10	55
	5920	0	01	58
	5919	0	05	15
	5992	0	09	43
	5874/1	0	01	71
	5873/2	0	06	75
	5873/1 मिला	0	04	99
	5872/1	0	09	22
	5871/1	0	13	72
	5867	0	00	48
	5866	0	17	64
	5865	0	00	20
	3982	0	24	26
	3983	0	00	76
	4040	0	00	20
	4039	0	03	59
	3997	0	08	81
	4015/1	0	08	64
	4016	0	05	79
	4017/1	0	04	63
	4018/1	0	06	77
	4020	0	02	27
	4019	0	01	55

1	2	3	4	5
	4022	0	00	48
	4023	0	01	57
	5299	0	00	20
	5298	0	09	98
	5263/1	0	05	97
	5264	0	04	30
	5262	0	05	17
	5268	0	00	20
	5269	0	01	58
	5257	0	09	16
	5255/1	0	06	77
	5254	0	06	24
	5231	0	00	89
	5230	0	07	48
	5228	0	08	20
	5227	0	09	18
	5226	0	08	41
	5225	0	00	67
	5215	0	03	11
	5213	0	01	31
	5214	0	04	69
	5207	0	17	75
	5211	0	00	20
	5206	0	02	74
	5200	0	16	48
	5201	0	09	95
	5196	0	08	62
	5195	0	09	00
	5194	0	05	08
नासून	5/5	1	12	23
	6/2	0	10	42

[फा. सं. 25011/38/2001-ओ.आर-1]

एस० चन्द्रशेखर, अपर सचिव

New Delhi, the 8th November, 2001

S. O. 3044.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of crude oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan, a pipeline should be laid by the Indian Oil Corporation Limited for implementing the "Augmentation of Viramgam – Chaksu, Chaksu – Panipat and Chaksu – Mathura sections of Salaya – Mathura Pipeline System".

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of the notification issued under sub-section (1) of section 3 of the said Act are made available to the general public, object in writing to the laying of the pipeline under the land to Shri Sunil Sharma, Competent Authority, Salaya-Mathura Pipeline (Augmentation) Project, Indian Oil Corporation Limited, 33, Muktanand Nagar, Gopal Pura Bye-Pass, Jaipur, (Rajasthan)

SCHEDULE

Tehsil : MASUDA		Distriot : AJMER		State : RAJASTHAN	
Name of the Village	Khasara No.	Area			
		Hectare	Are	Sq.mtr.	
1	2	3	4	5	
KANA KHERA	2179	0	13	84	
	2178/1	0	12	93	
	2178/2	0	13	11	
	2163/3	0	04	72	
	2202	0	12	87	
	2163/7	0	20	68	
	2106	0	01	79	
	2103	0	02	29	
	2105	0	02	31	
	2104	0	04	50	
	2099	0	00	90	
	2111	0	01	51	
	2098	0	06	69	
	2112	0	03	71	
	2097	0	02	67	
	2096	0	02	41	
	2113/2	0	00	34	
	2074	0	00	20	
	2073	0	08	82	
	2081	0	02	88	
	2082	0	01	47	
	2083	0	07	41	
	2065	0	09	91	
	1945/2	0	10	62	
	1945/1	0	05	08	
	1946	0	10	55	
	919	0	08	57	
	1941	0	03	80	
	1940	0	06	18	
	1934/3	0	09	52	

1	2	3	4	5
KESHARPURA	697	0	00	20
	698/1	0	13	11
	696	0	01	81
	699	0	01	69
	706/1	0	03	17
	708	0	07	66
	709	0	04	68
	710	0	05	99
	711	0	01	49
	712	0	17	00
	790	0	03	09
	638	0	00	24
	634/2	0	00	40
	630	0	22	58
	487	0	02	73
	494	0	06	48
	493/1	0	14	93
	493/2	0	01	16
	413	0	05	11
	416	0	03	45
	412	0	09	29
	401	0	06	42
	397	0	02	34
	396	0	04	71
	395	0	01	33
	402	0	00	20
	394	0	14	16
	393	0	04	83
	392	0	04	18
	347	0	06	28
	345	0	04	99
	330	0	02	96
	328	0	06	28
	326	0	00	35
	325/1	0	02	10
	325/2	0	03	63
	309/1	0	00	43

1	2	3	4	5
	318/1	0	08	77
	316/1	0	07	39
	316/2	0	00	33
	315/1	0	05	48
	315/2	0	01	23
	312	0	00	24
	311	0	00	20
	313/1	0	02	88
	1091/1	0	05	11
	1092	0	03	15
	1093	0	01	74
	1094/1	0	06	15
	1095	0	01	70
	1097	0	01	37
	1099	0	03	86
KHARWA	6848/1	0	11	91
	6852	0	02	96
	6850/1	0	06	76
	6834	0	09	40
	6836	0	09	32
	6835	0	01	09
	6837	0	08	72
	6826	0	02	13
	6825	0	01	20
	6824	0	04	55
	6752/2	0	00	20
	6752/1	0	11	87
	6765	0	07	40
	6763	0	04	19
	6762	0	08	17
	6756	0	01	91
	6761	0	02	95
	6758	0	00	20
	6759	0	04	81
	6286	0	10	75
	6285	0	04	68
	6290	0	00	40

1	2	3	4	5
	6275	0	14	25
	6274	0	05	39
	6266	0	08	88
	6267	0	03	18
	5946	0	00	20
	5947	0	07	72
	5943	0	04	30
	5948	0	00	20
	5949	0	04	56
	5934	0	05	08
	5935	0	00	62
	5926	0	04	41
	5925	0	02	06
	5924	0	02	19
	5923	0	10	55
	5920	0	01	58
	5919	0	05	15
	5992	0	09	43
	5874/1	0	01	71
	5873/2	0	06	75
	5873/1 Min	0	04	99
	5872/1	0	09	22
	5871/1	0	13	72
	5867	0	00	48
	5866	0	17	64
	5865	0	00	20
	3982	0	24	26
	3983	0	00	76
	4040	0	00	20
	4039	0	03	59
	3997	0	08	81
	4015/1	0	08	64
	4016	0	05	79
	4017/1	0	04	63
	4018/1	0	06	77
	4020	0	02	27
	4019	0	01	55

1	2	3	4	5
	4022	0	00	48
	4023	0	01	57
	5299	0	00	20
	5298	0	09	98
	5263/1	0	05	97
	5264	0	04	30
	5262	0	05	17
	5268	0	00	20
	5269	0	01	58
	5257	0	09	16
	5255/1	0	06	77
	5254	0	06	24
	5231	0	00	89
	5230	0	07	48
	5228	0	08	20
	5227	0	09	18
	5226	0	08	41
	5225	0	00	67
	5215	0	03	11
	5213	0	01	31
	5214	0	04	67
	5207	0	17	75
	5211	0	00	20
	5206	0	02	74
	5200	0	16	48
	5201	0	09	95
	5196	0	08	62
	5195	0	09	00
	5194	0	05	08
NASOON	5/5	1	12	23
	6/2	0	10	42

[No. R-25011/38/2001-OR-I]
S CHANDRA SEKHAR, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3045.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को, प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/2/2001-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 17th October, 2001

S.O. 3045.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/2/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM LABOUR COURT VISAKHAPATANAM

PRESENT:

Sri K. Vcerapu Naidu, B. Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

L.T.I.D(C)No. 23/99**BETWEEN:**

Palivela Izrail Raju,
S/o. Simhadri, D. No. 19-4-6, Bankpeta,
Kakinada, East Godavari Dist.

...Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramudas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Gollalapalem branch in the year 1987 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Main Branch, Kakinada. The management did not allow the workman to work more than 200 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 1062 days from 1987 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidate whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff federation. The petitioner was engaged as a Messenger in State Bank of India Gollalapalem branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 1-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the

administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-75.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C', Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as following :

"persons, who have been engaged in casual basis (as defined in clause 11(ii) hereunder) to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, water Boys, sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the

bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently. Settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 par. 31 for temporary employees after effecting conversion from time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upto by the above said settlements and the memorandum of understanding were

filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlement to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 560 and he worked for 65 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the

workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from servicing owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W7. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Section 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Gollalapalem branch in the year 1987 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W6 and W7.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the

Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 65 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be elected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W6 and W7 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W6 is a circular dated 16th November, 1997, Ex. W7 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W7 that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W6 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled....."

No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25-

B(2) reads as follows

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer and for less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case ”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Here the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W6 and W7 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1987 and he is only a casual employee. The circulars Exs W6 and W7 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be those settlements are only with regard to the regulation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour

(Abolition, and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 65 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Secs. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased be to held under Sec. 25F of the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no Merits in this application

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : WITNESSES EXAMINED

For workman : WW1 : P. Izarail Raju

For management : MW1 : Crm Sastry

DOCUMENTS MARKED

FOR WORKMAN :

Ex. W1 : 19-7-96 : Service certificate

Ex. W2 : 25-4-97 : Service certificate

Ex. W3 : 29-6-93 : Service certificate

Ex. W4 : 26-6-92 : Service certificate

Ex. W5 : 10-8-88 : Service certificate

Ex. W6 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad.

Ex. W7 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad.

FOR MANAGEMENT :

Ex. M1 : List of Ex. temporary employees who raised dispute before Asst. Labour Commissioner (Central), Visakhapatnam.

Ex. M2 : Settlement and judgments regarding regularisation of services of the temporary employees and casual employees.

Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3046. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संसद् नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/3/2001-आईआर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3046.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/3/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT VISAKHAPATANAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman & Presiding Officer

Dated : 18th day of August, 2001

I.T.L.D No. (C) 22/99

BETWEEN:

Kapuganti Durga Prasad,
S/o. Narayana Murthy,
D. No. 19-4-6, Bankpeta, KakinadaWorkman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20.Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Peddapuram branch on 8-3-83 in a permanent vacancy and he served at Different places till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked an aggregate of 55 days in the year 1983, for 32 days in 1985, for 120 days in 1991, for 119 days in 1992, for 144 days in 1993, for 164 days in 1994, for 120 days in 1995, for one day in 1996 and for 59 days in the year 1997. He was terminated on 1-4-1997 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed in temporary vacancies and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-1981 directing the temporary employees should not be engaged for more than 200 days in a Calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a Temporary Messenger in State Bank of India Peddapuram in a leave vacancy. As per the settlement mentioned above the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957

and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Collies, Water Boys, Sweepers etc, for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995

to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

7. In pursuance of the conciliation proceedings, a settlement was entered into between the same parties on 30-7-96. It is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94. It has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengers' staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who have been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case has not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 325 and he worked for 87 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is

false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from servicing owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W4. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M2.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act ?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for ?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Peddapuram branch on 8-3-83 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W3 and W4.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 87 days during the relevant period from 1-7-85 to 31-7-88. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked

for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W4 is a circular dated 16th November, 1997, Ex. W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

(i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.

(ii) They be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W5 that :

(a) No temporary employee should be allowed, under any circumstances, to 90 days temporary service in a year.

(b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

(c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W4 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause

(1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25-B(1).

"25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cession of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25-B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date

with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) ninety-five days, in the case of a workman employed below ground in a mine, and
- (ii) one hundred and twenty days, if any other case "

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1983 and he is only a casual employee. The circulars Exs W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their

legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list Ex W3 at serial No 3708. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the contract Labour Abolition, and Regulation Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and others etc reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec 25F of the I D Act

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 87 days

during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F for the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and Nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : WITNESSES EXAMINED :

For Workman : WW1 : K. Durga Prasad

For Management : Sri C.R. M. Sastry

Documents marked for workman :

Ex W1 : 23-1-92 : Service Certificate

Ex W2 : 25-4-97 : Service Certificate

Ex W3 : Service Certificate

Ex W4 : 24-9-81: Staff Circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Ex W5 : 16-11-79: Staff Circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Documents marked for Management :

Ex.M1 : List of Ex. Temporary Employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam.

Ex.M2 : Printed book of Settlements and judgments regarding regularisation of services of the temporary employees and casual employees.

Ex.M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner (By consent).

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3047.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/4/2001-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3047.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/4/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM LABOUR COURT VISAKHAPATNAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman & Presiding Officer

Dated : 18th day of August, 2001

L.T.LD(C) No. 24/99

BETWEEN:

Palepu Ramakrishna
S/o. Venkata Krishna Rao,
D. No. 19-4-6, Bankpeta,
Kakinada, East Godavari Dist.

...Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramadas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Ravulapalem branch in the year 1987 in a permanent vacancy and he served at different place till he was finally terminated at State Bank of India Ravulapalem East Godavari District. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year

(3) The petitioner worked in the respondent bank for 647 days from 1987 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidate whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 240 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case

of penal of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India Ravulapalem branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 1-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-75.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd

settlement is entered into between the same parties on 27-10-88 as per said settlement a Clause 1-A after Clause 1 in the first settlement is installed and it is as follows

“persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category ‘A’, ‘B’, and ‘C’ in Clause 1 will be given a chance for being considered for permanent appointment in the bank’s service against vacancies likely to arise from 1988 to 1992 ”

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently

(7) In pursuance of the conciliation proceedings settlement was again entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from fully time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97

(9) The vacancies as agreed upto by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being

considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 471 and he worked for 74 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from serving owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W4. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act ?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for ?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Paddapuram branch on 1987 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India, Main Branch, Kakinada

without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W3 and W4.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 74 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e., that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W3 and W4 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W3 is a circular dated 16th November, 1997, Ex. W4 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them :

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days, temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W4 that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extent instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W3 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B, clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadih Colliery Vs. Their Workmen, wherein their Lordships were placed to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though Sec. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled..... No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision

and the contention raised by the counsel for workman it is essential to extract Sec. 25-B(1).

"25B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including services, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case."

(26) In the above said decision, their Lordships have considered the service of the workman worked for more than 240 days in each calendar year though with same interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W3 and W4 and the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1983 and he is only a casual employee. The circulars Exs. W3 and W4 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management.

Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the workman is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 74 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240

days—His verbal termination of services—does not violate Sec. 25F.”

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE:

WITNESSES EXAMINED FOR

Workman :	Management :
WW1 : P. Rama Krishna	MW1 Sri C.R.M. Sastry

Documents marked For Workman :

Ex. W1 : 19-3-86 : Service Certificate
 Ex. W2 : 31-7-89 : Service Certificate
 Ex. W3 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.
 Ex. W4 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Documents marked for Management

Ex. M1 : List of Ex. temporary employees who raised dispute before Asst. Labour Commissioner (Central), Visakhapatnam.
 Ex. M2 : Settlements and judgments regarding regularisation of services of the temporary employees and casual employees.
 Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3048.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 के प्राप्त हुआ था।

[सं. एल-12014/5/2001-आई आर (बी.-आई.)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3048—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/5/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATANAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

L.T.LD(C)No. 25/99

BETWEEN:

Chinna Immanuel Raju,
S/o. Babulu,
D. No. 19-4-6, Bankpeta,
Kakinada.

...Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao. advocates for workman and Sri M. Ramadas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

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(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State bank of India, Main Branch Kakinada in the year 1988 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main Branch, Kakinada.

The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year

(3) The petitioner worked in the respondent bank for 991 days from 1988 to 1997 and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidate whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act, as this is not a case of discharge or dismissal, retrenchment or termination of service. While it is a case of panel of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff of Federation. The petitioner was engaged as a Temporary Messenger in State Bank of India Main Branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 10(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central)

Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows:

- (i) Category 'A', those who have completed 240 days temporary service in 12 months or less after 1-7-75
- (ii) Category 'B', Those who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Category 'C', Those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management banks service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as following:

"persons, who have been engaged in casual basis (as defined in clause 11(ii) hereunder) to work in leave/casual vacancies of Messengers, Farrashes, Cash Colliers, water Boys, sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995

to 1996 in respect of casual/daily wagers. There are 2 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 242 and he worked for 45 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 77 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days, and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is

false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W5. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Peddapuram branch on 8-3-83 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India, Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs W4 and W5

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 87 days during the relevant period from 1-7-85 to 31-7-88. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W4 is a circular dated 16th November, 1997, Ex. W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W5 that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us
- (c) Under the circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W6 is another circular dated 24th Sept. 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for

more than 240 days so as to seek the shelter under Sec. 25B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25B of the I. D. Act and it is as follows :

“Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

“25B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer, Sec. 25-B(2) reads as follows :

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

- (ii) two hundred and forty days, in any other case,

- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for and not less than—

- (i) for ninety-five days, in the case of a workman employed below ground in a mine; and

- (ii) one hundred and twenty days, in any other case.”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be also to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W4 and W5 the workman was not

allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1988 and he is only a casual employee. The circulars Exs W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regulation of the temporary/casual employees. The point before me is at with regard to the regularisation of the service of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition, and Regulation Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and Others etc reported in AIR 1990 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec 25F of the I D Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 45 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec 25F and 25B of the I D Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I C 1376 between Pali Central Cooperative Bank Ltd, Pali Vs Sumil Kumar Sharma wherein their Lordships of the Rajasthan High Court were pleased to hold under Sec 25F of the I D Act that

“the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec 25F”

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec 25F of the I D Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August 2001

K VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Workman

For Management

WW1 Ch Immanuel Raju

MW1 Sri C R M Sastry

DOCUMENTS MARKED

FOR WORKMAN:

Ex W1 19-7-96

Service Certificate

Ex. W2 : 25-4-97 : Service Certificate

Dated : 18th day of August, 2001

Ex. W3 : 6-4-92 : Panel List

I.T.LD(C)No. 26/99

Ex. W4 : 24-9-81 : Staff Circular No. 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad.

BETWEEN:Puthukula Neelkanteswara Rao,
S/o Subba Rao,

Ex. W5 : 16-11-79 : Staff Circular No. 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad.

D. No. 19-4-6, Bankpota,

Kakinada, East Godavari Dist.

...Workman

AND

FOR MANAGEMENT:

Ex. M1 : List of Ex. temporary employees who raised dispute before Asstt. Labour Commissioner (Central), Visakhapatnam.

(1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.

Ex. M2 : Settlements and Judgments regarding regularisation of service of the temporary employees and casual employees.

(2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India A.D. branch, Poddapuram on 12-3-79 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Poddapuram branch. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 471 days from 1979 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 240 days in a calendar year. The management

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3049.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/6/2001-आई आर (बी. I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3049.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/6/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXUREIN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATANAM**PRESENT:**Sri K. Veerapu Naidu, B. Sc., B.L., Chairman &
Presiding Officer

did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management State Bank and State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India Peddapuram branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 1-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B', Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Categories 'C', Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for

permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, or Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in categories 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992 "

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the last settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 Zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to indentify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upto by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlement 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. There after the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does

not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 309 and he worked for 89 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from serving owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W6. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides

(18) The points that arise for consideration are :

(1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act ?

- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, A D Branch, Peddapuram on 12-3-79 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Peddapuram branch without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs W5 and W6.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97 the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 89 days during the relevant period from 1-7-77 to 31-7-88. It is also contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec 25F of the I D Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs W5 and W6 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex W4 is a circular dated 16th November, 1997, Ex W6 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them:

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later be absorbed in the existing regular vacancies in subordinate cadre, if any subject to their being otherwise eligible and found suitable in an interview. This would, however be subject to the constraints of reservation of vacancies for

SC/ST candidates and after protected temporary employees viz. these who have put in 240 days temporary service in 12 calendar months have been absorbed.

- (ii) They be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex W6 that

- (a) No temporary employee should be allowed under any circumstances to cross 90 days temporary service in a year.
- (b) Those who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates who do not meet the required stipulations in regard to age/educational qualifications should be offered temporary/permanent appointment.

(23) Ex W5 is another circular dated 24th September 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25-B or Sec 25F of the I D Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Divisional Officer. Their workman wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec 25B of the I D Act and it is as follows:

Though Sec 25F speaks of continuous service for not less than one year under the employer, the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. Continuous service is necessary if the total service is 240 days.

in a period of 12 calendar months either before these several changes or after these."

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25B(1) : a workman shall be paid to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman "

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25-B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer and for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case."

(26) In the above said decision, their Lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their Lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as "continuous service" irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W5 and W6 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1983 and he is only a casual employee. The circulars Exs. W5 and W6 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel

list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place some else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 89 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1570 between Pali

Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F for the I.D. Act that

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno, transcribed by her, given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Workman .	For Management .
WW1 . K. Neelkanteswar Rao	MW1 . C.R.M. Sastry

DOCUMENTS MARKED

FOR WORKMAN :

Ex. W1 : Service certificate
 Ex. W2 : 18-1-93 . Service certificate
 Ex. W3 : 20-11-96 . Service certificate
 Ex. W4 : 25-11-91 Panel list
 Ex. W5 : 24-9-81 . Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Dept , Hyderabad
 Ex. W6 : 16-11-79 . Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Dept , Hyderabad

DOCUMENTS MARKED FOR MANAGEMENT :

Ex M1 . List of Ex. temporary employees who raised dispute before Asst. Labour Commissioner (Central), Visakhapatnam.
 Ex M2 . Settlements and Judgments regarding regularisation of service of the temporary employees and casual employees
 Ex. M3 . Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3050 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 1/ के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुवध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं एल-12014/7/2001-आई आर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3050 — In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No L-12014/7/2001-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, VISAKHAPATANAM

PRESENT

Sri K. Veerapu Naidu, B. Sc., B. L., Chairman and
Presiding Officer

Dated 18th day of August, 2001

I.T.L.D.(C) No. 27/99

BETWEEN

Paragada Maheswara Rao

S/o Ayababu,

D No 1946, Bankpeta,

Kakinada East Godavari Dist

—Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M.

Ramdas, Advocate for Management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following

AWARD

(1) This is an application filed under Sec 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Kothakota branch in the year 1985 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Zonal Branch. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 544 days from 1985 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec 25G of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application is rejected.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management, State Bank and State of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India, Kothakota branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 1-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for

200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows.

- (i) Category 'A', Those, who have completed 240 days temporary service in 12 months or less after 1-7-75.
- (ii) Category 'B', Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C' - Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as following.

"Persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Collies, Water Boys, Sweepers etc., for any of the periods mentioned in categories 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent

appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-96 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengers' staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both

the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upto by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlement.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post which he worked was permanent in nature. The seniority position of this workman was 289 and he worked for 92 days only during

the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from serving owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W7. On behalf of the management, the Chief Manager Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Kothakota branch in the year 1985 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Zonal Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W6 and W7.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 92 days during the relevant period from 1-7-97 to 31-7-98. It is also contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act

(21) I will deal with the first contention raised by the counsel for workman *i.e.*, that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W6 and W7 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W6 is a circular dated 16th November, 1997, Ex. W7 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees *viz.*, those who have put in 240 days' temporary service in 12 calendar months, have been absorbed.
 - (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.
- (22) It is further instructed in Ex. W7 that .
- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year

- (b) Those, who have completed 270 days temporary service as above and have been engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W6 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25-B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadeh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before those several changes or after these "

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that

period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25-B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months proceeding the date with reference to which calculation is to be made, he actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case."

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some

interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W6 and W7 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1985 and he is only a casual employee. The circulars Exs. W6 and W7 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The

point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition, and Regulation) Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(34) The contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 92 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to held under Sec. 25F of the I.D. Act that :

"the termination of the services of the daily wages employes—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I D Act. Therefore, I see no Merits in the application

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : WITNESSES EXAMINED : FOR

WORKMAN : MANAGEMENT

WW1 R. Maheshwar Rao MW1 Sr C R M Sastry

Document marked for workman :

Ex. W1 : 12-5-94 Service certificate

Ex. W2 : Service certificate

Ex. W3 : Service certificate

Ex. W4 : Service certificate

Ex. W5 : 25-11-91: Panel List

Ex. W6 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad

Ex. W7 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad

DOCUMENT MARKED FOR MANAGEMENT :

Ex. M1 : List of Ex-Temporary employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam

Ex. M2 : Settlement and judgments regarding regularisation of services of the temporary employees and casual employees

Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioners

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3051.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम

न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/8/2001-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3051.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/8/2001-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

THE COURT OF INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT VISAKHAPATANAM

PRESENT :

Sri K. Veerapu Naidu, B Sc., B L., Chairman & Presiding Officer

Dated : 18th day of August, 2001

I.T.I.D No. (C) 28/99

BETWEEN :

Kada Satyavathi,
W/o Krishana,
D. No 19-4-6, Bankpete,
Kakinada, East Godavari Dist. .. Workman
AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramidas, Advocate for Management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India. Pedapadu branch on 16-5-85 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Treasury Branch Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 374 days from 1985 to 1997 and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25F of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management, State Bank and State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India Pedapadu branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 1-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 220 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from

1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec 2(p) read with Section 10(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows.

- (i) Category 'A': those, who have completed 240 days temporary service in 12 months or less after 1-7-75.
- (ii) Category 'B'. Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Category 'C'. Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows:

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Collies, water Boys, Sweepers etc, for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and

1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive upto March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengers' staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upto by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous

12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlement.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 196 and he worked for 59 6 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 77 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity

of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from servicing owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W3. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act ?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Pedapadu branch on 16-5-85 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Treasury Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W2 and W3.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto

December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 77 days whereas the petitioner worked only for 59 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be elected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e., the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W2 and W3 issued by the General Manager (operations), State Bank of India, Hyderabad. Ex. W2 is a circular dated 16th November, 1997 Ex. W3 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
 - (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.
- (22) It is further instructed in Ex W3 that.
- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
 - (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
 - (c) Under no circumstances, candidates, who do not meet the required stipulations in regard

to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W2 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25-B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

“Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....

No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their lordships observed that the service for 240 days in a period of 12 calendar months equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

“25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not

due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer Sec 25-B(2) reads as follows

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—

(i) ninety five days in the case of a workman employed below ground in a mine, an

(ii) one hundred and twenty days, in any other case,

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he

could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W2 and W3 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1985 and he is only a casual employee. The circulars Exs W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition, and Regulation Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State

Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 59.6 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that :

"the termination of the services of the daily wages employee—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : WITNESSES : EXAMINED : FOR

FOR WORKMAN : FOR MANAGEMENT

WW1 K Satyawati MW1 Sr C.R.M Sastry

Documents marked for workman :

Ex. W1 : 10-6-96 : Service certificate.

Ex. W2 : 24-9-81 : Staff Circular No. 91 issued by General Manager (Operations) for Personnel Department, Hyderabad.

Ex. W3 : Staff Circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad

DOCUMENTS MARKED FOR MANAGEMENT :

Ex. M1 : List of Ex-Temporary employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam.

Ex. M2 : Settlement and judgments regarding regularisation of services of the temporary employees and casual employees.

Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3052.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/9/2001-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3052.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/9/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT : VISAKHAPATANAM

PRESENT :

Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

I.T.I.D(C) 29/99

BETWEEN :

Pamurikada Devadass
S/o. Mutyam
D. No 19-4-6, Bankpeta, Kakinada Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 .Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following .

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State bank of India, Kothapeta branch on 16-5-88 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Poduru Paka branch East Godavari District. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year

(3) The petitioner worked in the respondent bank for 213 days from 1988 to 1997 with breaks and he was

terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for long period. As list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a Temporary Messenger in State Bank of India Kothapeta branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-97. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows .

- (i) Category 'A', Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B', Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C', Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B' and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office

of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive upto March, 1997 and the vacancies will be filled from both the lists concurrently.

7. In pursuance of the conciliation proceedings settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel

on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the Management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 264 and he worked for 387 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 77 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were senior to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege

that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W7. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are:

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Kothapeta branch on 16-5-88 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Pondurupaka branch without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W6 and W7.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 77 days whereas the petitioner worked only for 387 days during the relevant period from 1-7-97 to 31-7-88. It is also contended that the workman also appeared for interview in view of the

said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W6 and W7 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W6 is a circular dated 16th November, 1997, Ex. W7 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W7 that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W6 is another circular dated 24th Sept., 1981 where under it is instructed that the temporary

employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I.D. Act. The learned counsel appears for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the apex court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I.D. Act and it is as follows :

“Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their lordships observed that the service for 240 days in a period of 12 calendar months equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

“25-B(1) : A workman shall be paid to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer. Sec. 25-B(2) reads as follows :

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer and for less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case ”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1983 and he is only a casual employee. The circulars Exs W6 and W7 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be

terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place some else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 387 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel place reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Valsi Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that

“the termination of the services of the daily wages employee—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F”

Therefore, the above said decision squarely applies to the case on hand

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I.D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and Nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED FOR

WORKMAN : MANAGEMENT

WW1 P. Davadas MW1 Sri C. R. M. Sastry.

Document marked for workman :

- Ex. W1 : 8-8-88 . Service Certificate
- Ex. W2 : 27-11-95 . Service Certificate
- Ex. W3 : 26-7-89 . Service Certificate
- Ex. W4 : 2-5-97 . Service Certificate
- Ex. W5 : 6-4-92 . Panel List.
- Ex. W6 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.
- Ex. W7 : 16-11-79: Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

DOCUMENTS MARKED FOR MANAGEMENT :

- Ex. M1 : List of Ex-Temporary Employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam.
- Ex. M2 : Settlement and Judgments regarding regularisation of services of the temporary employees and casual employees.
- Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, दिनांक 17 अक्टूबर, 2001

का. आ. 3053.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/10/2001-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3053.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/10/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM LABOUR COURT VISAKHAPATNAM

PRESENT :

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

I.T.I.D.(C)No. 30/99

BETWEEN :

Jods Kiran Prakash China Babu,
s/o Ramakrishana, ... Workman
D. No. 19-4-6, Bankpeta,
Kakinada.

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 . Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramdas, Advocate for Management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Pedapadu branch on 16-5-85 in a permanent vacancy and he served at different places till he was finally terminated

at State Bank of India Treasury Branch Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 270 days from 1980 to 1993 and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25F of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management State Bank of India and State of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India Samarlakotha branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from the year 1993. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the

management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A' Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975
- (ii) Category 'B' Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Category 'C' Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992 "

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary

employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e., 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements

1 to 5 referred above, and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointment ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 404 and he worked for 79 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is stopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement is submitted

that all the 7 candidates were seniors to the workman and they worked for 240 days, 276 days, 179 days, 220 days, 179 days, and 196 days and 200 respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs W1 to W5. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are

- (1) Whether the petitioner was retrenched in violation of Sec 25F of the I D Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Samarlakota branch in the year 1980 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India, Samarlakota branch, Kakinada without any notice from 1993. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs W4 and W5.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed.

and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 79 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman *i.e.*, that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W4 is a circular dated 16th November, 1997 Ex. W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W5 that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard

to age/educational qualifications, should be offered temporary/permanent appointment

(23) Ex W4 is another circular dated 24th Sept, 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25-B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadih Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

“Though S. 25F of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....

No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

“25B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the

workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec 25-B(2) reads as follows

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than --
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case,

(26) In the above said decision, their Lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their Lordships observed that even there were some interruptions the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1980 and he is only a casual employee. The circulars Exs. W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the

regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition and Regulation Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 79 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to held under Sec. 25F for the I.D. Act that .

"the termination of the services of the daily wages employes—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F"

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I.D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : WITNESSES EXAMINED : FOR

WORKMAN : MANAGEMENT

WW1 JKP Chinna Babu MW1 Sr. C R M Sastry.

Documents marked for workman :

- Ex. W1 : 17-8-89 : Service certificate.
- Ex. W2 : 30-4-97 : Service Certificate
- Ex. W3 : 25-11-91 : Panel List
- Ex. W4 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.
- Ex. W5 : 16-11-79 : Staff Circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

DOCUMENT MARKED FOR MANAGEMENT :

- Ex. M1 : List of Ex-Temporary employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam.
- Ex. M2 : Settlements and judgments regarding regularisation of service of the temporary employees and casual employees
- Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3054.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल—12014/11/2001/आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3054.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal cum Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No. L-12014/11/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM LABOUR COURT VISHAKHAPATNAM

PRESENT :

Sri K. Veerapu Naidu, B Sc., B.L., Chairman & Presiding Officer

Dated: 18th day of August, 2001

I.T.I.D. (C) 31/99

BETWEEN

Ijjana Nagaraju,
S/o Pothuraju,
19-4-6, Bankpeta,
Kakinada.

...Workman

AND

1. The Chief General Manager
State Bank of India,
Local Head Office, Bank Street,
Hyderabad
2. The Dy General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 .. Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Shri M. Sarveswara Rao, advocates for workman and Sri

M Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following:

AWARD

(1) This is an application filed under Sec.2A (2) of the Industrial Disputes Act, 1947 for reinstatement with backwages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Samarlakota branch on 1.1.86 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Samarlakota Branch. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 291 days from 1986 to 1997 and he was terminated on 1.4.97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24.9.91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec 25G of the I.D Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management paying Rs 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act, as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management State Bank of India and State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India, Samarlakota branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31.3.97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for

200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-97. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2 (p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows:

- (i) Category 'A': Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B': Those, who have completed 270 days aggregate temporary services in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C': Those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-1988 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis (as defined in clause 11(ii) hereunder) to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A' 'B' and 'C' in Clause 1 will be given a chance for being considered for permanent appointment

in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

6. The 4th settlement was entered into between the same parties on 9-1-1991 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily Wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of Casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and Non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

7. In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers/cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion full time non-messengerial staff in the usual manner.

Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked up to 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this

workman was 373 and he worked for 82 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from servicing owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W5. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

(1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act.

(2) Whether the petitioner is entitled for reinstatement with back wages as prayed for.

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Samarlakota Branch on 1-1-86 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Samarlakota without any notice from 1-4-97. It is further contended that the management deprived him to service for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W4 and W5.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 82 days during the relevant period from 1-1-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex W4 is a circular dated 16th November, 1997, Ex W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them:

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex W5 that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.

(b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

(c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex.W4 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employees in relation to the Digwadeh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows:

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1)

"25-B(1) . a workman shall be said to be in continuous service, for a period if he is, for that period, in-uninterrupted service, including service,

which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer. Sec. 25-B(2) reads as follows :

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case ”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be

taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W4 and W5 and the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1986 and he is only a casual employee. The circulars Exs. W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of

the services of the petitioner and others The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and others etc reported in AIR 1999 Supreme Court 1160 have no application Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec 25F of the I D Act

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking any one on temporary basis in the leave vacancies The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period The petitioner worked for 82 days during the crucial period His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management The workman in this case is not in continuous service of 240 days as required under Sec 25F and 25B of the I D Act Hence the petitioner cannot ask for reinstatement

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I C 1370 between Pali Central Cooperative Bank Ltd, Pali Vs Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec 25F of the I D Act that

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec 25F"

Therefore, the above said decision squarely applies to the case on hand

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec 25F of the I D Act Therefore, I see no Merits in this application

(38) In the result, the petition is dismissed and nil award is passed However, there is no order as to costs and each party is directed to bear its own costs

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN : WW1 I NAGA RAJU

FOR MANAGEMENT : MW1 SRI C R M SASTRY

DOCUMENTS MARKED FOR WORKMAN :

Ex W1 18-8-89 Service Certificate

Ex W2 10-4-97 Service Certificate

Ex W3 25-11-91 Panel List

Ex W4 24-9-81 Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept, Hyderabad

Ex W5 16-11-89 Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept, Hyderabad

DOCUMENTS MARKED FOR MANAGEMENT :

Ex M1 List of Ex temporary employees who raised dispute before Asst Labour Commissioner (Central), Visakhapatnam

Ex M2 Settlement and Judgments regarding regularisation of services of the temporary employees and casual employees

Ex M3 Details of list of candidates appointed who are alleged to be juniors to the petitioners.

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3055 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के सम्बद्ध नियोजन में कार्यरत कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचत को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[स एल 12014/12/2001 आर आर (बी 1)]

नारायण कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3055.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No.-12014/12/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATANAM

PRESENT :

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

I.T.L.D (C) No. 32/99

BETWEEN :

Kuniganti Venkata Satya Prasad,
S/o. Sattiraju,
R/o. Tilak Chowk, Dasarivari Street,
Samgralakota. R. G. Dist. ...Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam—20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State bank of India Main branch, Kakinada on 1-5-87 in a permanent vacancy and

he served at different places till he was finally terminated at State Bank of India, Main branches, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 1055 days from 1987 to 1997 with breakes and he was terminated on in the year 1997 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioners post is a permanent in nature and he worked for a long period. A list of junior candidate whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calander year. The management did not follow the rule provided under Sec. 25F of the I.D. Act. namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management State Bank of India and the State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India Main Branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors whose are left over from the empenelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was

arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Categories 'A' : Those, who have completed 240 days temporary service in 12 months or less after 1-7-75.
- (ii) Categories 'B' : Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Categories 'C' : Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Colliers, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other

words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was again entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank.

The case of the petitioner was considered in the settlements 1 to 5 referred above and has case have not come up for consideration. The settlements 1 to 5 are being on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 648 and he worked for 36 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates

set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevant as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W7. On behalf of the management, the Chief Manager, Personnel in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are .

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main branch Kakinada on 1-5-87 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W6 and W7.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of Understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of

the empanelled list have worked for 97 days whereas the petitioner worked only for 36 days during the relevant period from 1-7-75 to 31-7-88. It is also contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W6 and W7 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W6 is a circular dated 16th November, 1997, Ex. W7 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them :

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-85 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W7 that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W6 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25B or Sec. 25F of the I.D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workmen, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25B of the I.D. Act and it is as follows

"Though Sec. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No uninterrupted service if necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, of a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation to work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, he actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer and for less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case "

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reasons that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence

the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contended that because of the circular issued by the management under Exs. W6 and W7 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1987 and he is only a casual employee. The circulars Exs. W6 and W7 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition, and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place some else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and others etc reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec 25F of the I D Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 36 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec 25F and 25B of the I D Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I C 1370 between Pali Central Cooperative Bank Ltd, Pali Vs Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec 25F of the I D Act that

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec 25F"

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec 25F of the I D Act. Therefore, I see no Merits in the application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN WW1 K V S PRASAD

FOR MANAGEMENT MW1 C R M SASTRY

DOCUMENTS MARKED

FOR WORKMAN

Ex W1 6-8-88 Service certificate

Ex W2 14-9-91 Service certificate

Ex W3 1-7-96 Service certificate

Ex W4 25-4-97 Service certificate

Ex W5 25-11-91 Panel list

Ex W6 24-9-81 Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept, Hyderabad

Ex W7 16-11-79 Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept, Hyderabad

FOR MANAGEMENT :

Ex M1 List of Extemporary employees who raised dispute before Asst Labour Commissioner (Central), Visakhapatnam

Ex M2 Settlement and Judgments regarding regularisation of services of the temporary employees and casual employees

Ex M3 Details of list of candidates appointed who are alleged to be juniors to the petitioner

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3056.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/13/2001-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3056 —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No L-12014/13/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM LABOUR COURT VISAKHAPATNAM****PRESENT :**

Sri K. Vecrapu Naidu, B. Sc., B. L., Chairman &
Presiding Officer

Dated 18th day of August, 2001

I.T.D(C) 33/99

BETWEEN :

Kusuma Prabhakara Rao,
S/o Bhushanam,
62-8-66, Gopalakrishna Nagar,
J. Ramaraopeta, Kakinada-2

Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, main branch, Kakinada on 2-1-88 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 1031 days from 1988 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several

juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-1991 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25F of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a messenger in State Bank of India main branch Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-97. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows:

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any

continuous block of 36 calendar months after 1-7-1975

- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1A after clause 1 in the first settlement is installed and it is as follow

"Persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Colliers, Water Boys, Sweepers etc., for any of the periods mentioned in categories 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively which was also agreed to substitute the year 1992 with 1994 in the first settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the

Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently

(7) In pursuance of the conciliation proceedings, a settlement was again entered into between the same parties on 30-7-96. It is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94. It has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengers' staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97

(9) The vacancies as agreed upon by the above said settlement and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who have been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case has not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per settlement. Since the panels were already lapsed on 31-7-88 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 296 and he worked for 90 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 275 days, 179 days, 220 days, 179 days, 196 days and 220 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the districts where their services were unwaranted. It is not a challenge to the settlement of rules in making permanent staffs. The petitioner is not a senior to the workman, hence he was not absorbed. The petitioner's service was not regularised. The petitioner's working days were 241 days. The petitioner's seniority position was 296.

(15) The 1st respondent adopted the counter claim by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W6. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 and M2.

(17) Heard both sides.

(18) The points that arise for consideration are.

(1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. A.

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, main branch Kakinada on 2-1-88 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to service for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W5 and W6.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year, much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 90 days during the relevant period from 1-7-85 to 31-7-88. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and hence the workman has not worked for more than 240 days in any calendar year. Hence he cannot claim regular appointment. The Act.

The learned counsel appearing for the petitioner submitted that the petitioner was not a senior to the workman and hence he was not absorbed. The petitioner's service was not regularised. The petitioner's working days were 241 days. The petitioner's seniority position was 296. The learned counsel appearing for the management submitted that the petitioner never worked for more than 240 days in any calendar year, much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 90 days during the relevant period from 1-7-85 to 31-7-88. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and hence the workman has not worked for more than 240 days in any calendar year. Hence he cannot claim regular appointment. The Act.

the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days/temporary service in 12 calendar months, have been absorbed.

- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex W6 that,

- (a) "No temporary employee should be allowed, under any circumstances, to 90 days temporary service in a year."

- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications should be offered temporary permanent appointment.

(23) Ex W5 is another circular dated 24th Sept, 1981 whereunder it is instructed that the temporary employees, who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said circulars the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I.D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work,

due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs Their workman wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I.D. Act and it is as follows

"Though S. 25F speaks of continuous service for not less than one year under the employer if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before those several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1)

"25-B(1) a workman shall be said to be in continuous service for a period if he is for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25B(2) reads as follows

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer

- (a) for a period of one year if the workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer not less than—

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and

- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer not less than—

made, has actually worked under the employer for not less than—

- (i) ninety-five days, in the case of a workman employed below ground in a mine, and
- (ii) one hundred and twenty days, in any other case "

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W5 and W6 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1983 and he is only a casual employee. The circulars Exs W5 and W6 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitions as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regulation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal

(32A) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition and Regulation Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(33) This contentions has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and others etc reported in AIR 1998 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec 25F of the I D Act

(34) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking any one on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 90 days during the crucial period. His services are disengaged as there is no continuous availability of leave

vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not a continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence, the petitioner cannot ask for reinstatement.

(35) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Co-operative Bank Ltd., Pali vs. Sunil Kumar Sharma wherein their Lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that

"the termination of the service of the daily wages employees—Not in continuous service for 240 days. His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(36) Thus, in the light of my aforesaid discussion the petitioner failed to establish that his case would fall under Sec. 25F of the I.D. Act. Therefore, I see no merits in the application.

(37) In the result, the petition is dismissed and nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE WITNESSES EXAMINED : FOR

WORKMAN : MANAGEMENT

WW1 K. Prabhakar Rao . MW1 Sr. C.R.M. Sastry.

Documents marked for workman :

- Ex. W1 : 1-7-96 : Service certificate
Ex. W2 : 25-4-97 : Service certificate.
Ex. W3 : 11-8-88 : Service certificate.
Ex. W4 : 25-11-91 : Panel list.
Ex. W5 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Ex W6

Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad

DOCUMENTS MARKED FOR MANAGEMENT

- Ex M1 : List of Ex-Temporary employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam
Ex M2 : Settlement and judgments regarding regularisation of services of the temporary employees and casual employees
Ex M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioners

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3057.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/14/2001-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3057 —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/14/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, VISAKHAPATNAM

PRESENT :

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman & Presiding Officer

Dated . 18th day of August, 2001

I.T.LD(C) No. (C) 34/99

BETWEEN :

Pulapakara Raju,
S/o. Meera Saheb
R/o 19-4-6, Bankpeta,
Kakinada, E.G. Dist.

Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Chief General Manager,
State Bank of India,
Central Office, RTC Complex,
2nd Floor, Visakhapatnam-20. Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed a messenger in the State Bank of India, Samarlakota branch on 1-1-86 in a permanent vacancy. He worked at different places till he was finally terminated at State Bank of India, Jaggampeta, E.G. Dist. Co. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 282 days from 1986 to 1992 with breaks and he was terminated in the year 1992 without any notice. Copies of year wise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed in temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-1981 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25F of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application

is not maintainable. The second respondent filed its counter pleading stating that this application is not maintainable under Sec. 2A of the Industrial Disputes Act, as this is not a case of discharge or dismissal,

retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India, Samarlakota branch in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1992. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 10(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows:

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement, which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as

contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

Persons, who have been engaged in casual post as defined in paragraph 1 of the settlement of 17-11-87, shall be absorbed in the permanent post of the bank. The management shall prepare a panel of casual employees for absorption in the permanent post of the bank. The panel shall be prepared on the basis of seniority and shall be valid for a period of one year from the date of its preparation. The panel shall be valid for a period of one year from the date of its preparation. The panel shall be valid for a period of one year from the date of its preparation.

Thereafter, the panel shall be prepared for a period of one year from the date of its preparation. The panel shall be valid for a period of one year from the date of its preparation. The panel shall be valid for a period of one year from the date of its preparation.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the first settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption or temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings, a settlement was entered into between the same parties on 9-6-95. The settlement was entered into between the same parties on 9-6-95. The settlement was entered into between the same parties on 9-6-95.

No temporary employees shall be allowed under any circumstances to cross 90 days temporary service in a year.

both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and the said vacancies were sanctioned to the Central Office. The said vacancies and other vacancies also may be sanctioned to the Central Office. The said vacancies and other vacancies also may be sanctioned to the Central Office. The said vacancies and other vacancies also may be sanctioned to the Central Office.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Therefore the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-7-88, the candidates who were not absorbed in the panels (that as per the settlement dated 9-1-91) shall be considered for permanent absorption in the bank.

The management services for a period of one year from the date of the settlement dated 9-1-91 shall be considered for permanent absorption in the bank.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 332 and he worked for 87 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanellment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 270 days, 170 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-91 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W4. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

(1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act.

(2) Whether the petitioner is entitled for reinstatement with back wages as prayed for ?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Samarlakota Branch on 1-1-86 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Jaggampeta Branch, E. G. Dist. without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W3 and W4.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 87 days during the relevant period from 1-7-97 to 31-7-98. It is also contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W3 and W4 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W3 is a circular dated 16th November, 1997 Ex. W4 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary

employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them :

(i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 20-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed

(ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees

(22) It is further instructed in Ex W4 that

(a) No temporary employees should be allowed, under any circumstances, to cross 90 days temporary service in a year,

(b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us

(c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment

(23) Ex W3 is another circular dated 24th September, 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the

workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under sec 25-B or Sec, 25F of the I D Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs Their Workmen, wherein their lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec 25B of the I D Act and it is as follows

“Though S 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted services necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these ”

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec 25B(1)

“25B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman ”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer, Sec 25-B(2) reads as follows

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, he actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WWI admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be also to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W3 and W4 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1986 and he is only a casual employee. The circulars Exs. W3 and W4 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatsoever it may be, those settlements are only with regard to the regulation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the

workmen is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition, and Regulation) Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(34) This contention has no force because it is not the case of the management that in the petitioner's place some else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and Others etc reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec 25F of the I D Act

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked 87 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec 25F and Sec 25B of the I D Act. Hence the petitioner cannot ask for reinstatement

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I C 1370 between Pali Central Cooperative Bank Ltd., Pali Vs Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleaded to hold under Sec 25F of the I D Act that

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec 25F"

Therefore, the above said decision squarely applies to the case on hand

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec 25F of the I D Act. Therefore, I see no Merits in the application

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN : WW1 P Raju,

FOR MANagements : MW1 Sri C RM Sastry

DOCUMENTS MARKED :

FOR WORKMAN :

- | | | |
|-------|----------|-----------------------------------------------|
| Ex W1 | 17-8-89 | Service certificate |
| Ex W2 | 25-11-91 | Panel list |
| Ex W3 | 24-9-81 | Staff circular No 91 by GM (O) SBI, Hyderabad |
| Ex W4 | 16-11-79 | Staff Circular No 91 by GM (O) SBI, Hyderabad |

FOR MANAGEMENT :

- | | |
|-------|----------------------------------------------------------------------------------------------------------------|
| Ex M1 | List of ex-temporary employees who raised dispute before Asstt Labour Commissioner (Central) Visakhapatnam |
| Ex M2 | Settlement and judgements regarding regularisation of services of the temporary employees and casual employees |
| Ex M3 | Details of list of candidates appointed who are alleged to be juniors to the petitioners |

नई दिल्ली, दिनांक 17 अक्टूबर, 2001

अधिसूचना

का. आ. 3058.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/15/2001-आई आर (बी.-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3058—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/15/2001-JR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATNAM

PRESENT :

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman & Presiding Officer

Dated : 18th day of August, 2001

I.T.L.D(C) 35/99

BETWEEN :

Marri Krupanandam,
S/o. Suuba Rao,
19-4-6, Bankpeta,
Kakinada

... Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramadas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, main branch Kakinada on 1-1-87 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 980 days from 1987 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act, as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management State Bank of India and State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger in State Bank of India Main Branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of

regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave oncession on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Categories 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-75.
- (ii) Categories 'B', Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Categories 'C', Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period of 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis (as defined in clause 11(ii) hereunder) to work in leave/casual vacancies of Messengers,

Farrashes, Cash Collies, water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was again entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to indentify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial

vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlement to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give any right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 240 days and he worked for 46 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 77 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs W1 to W4. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs M1 to M2.

(17) Heard both sides.

(18) The points that arise for consideration are

- (1) Whether the petitioner was retrenched in violation of Sec 25F of the I D Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, main branch on 1-1-87 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days.

in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W5 and W6.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 77 days whereas the petitioner worked only for 46 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W5 and W6 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W5 is a circular dated 16th November, 1997, Ex. W6 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them :

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W6 that.

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W5 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25 B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadih Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25 B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 250 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cession of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cession of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25-B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case "

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said

judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Here the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1987 and he is only a casual employee. The circulars Exs. W5 and W6 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever

it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the workman is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition, and Regulation Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 46 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their Lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that :

“the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F.”

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I.D. Act. Therefore, I see no Merits in the application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN : WW1 : M. KRUPANANDAM

MANAGEMENT : MW1 : CRM SASTRY

DOCUMENTS MARKED

FOR WORKMAN .

Ex. W1 : 4-8-88 . Service certificate

Ex. W2 : 25-7-1996 : Service certificate

Ex. W3 : 25-4-1997 . Service certificate

Ex. W4 : 6-4-1992 . Panel List

Ex W5 : 24-9-81 . Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad

Ex W6 : 16-11-79 . Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept , Hyderabad

DOCUMENTS MARKED FOR MANAGEMENT

Ex M1 . List of Ex. temporary employees who raised dispute before Asst. Labour Commissioner (Central), Visakhapatnam

Ex. M2 . Settlements and Judgments regarding regularisation of services of the temporary employees and casual employees

Ex. M3 . Details of list of candidates appointed who are alleged to be juniors to the petitioner

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3059.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संसद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक

अधिकरण/एवं म. गायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्र. सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/16/2001-आई आर. (बी.-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3059—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No. 1-12014/16/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATANAM

PRESENT :

Sri K. M. Naidu, B. Sc., B. L., Chairman &
PRESIDENTIAL OFFICER

Dated 18th day of August, 2001

I.L.D. (C) No. 36/99

BETWEEN :

Vinnakota Anjaneyudu,
S/o Krishna,
D No 19-4-6, Bankpeta
Kakinada

Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarvaswara Rao, advocate for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following

AWARD

(1) This is an application filed under Sec 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Draksharama branch on 26-4-82 in a permanent vacancy and he served at different place till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year

(3) The petitioner worked in the respondent bank for 1204 days from 1982 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec 25F of the I.D. Act namely "first come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management State Bank of India and State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India Draksharama Branch, in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of

the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec 2(p) read with Section 10(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows

- (i) Categories 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-75
- (ii) Categories 'B', Those, who have completed 270 days aggregate temporary service in any continuous block of 26 calendar months after 1-7-1975
- (iii) Categories 'C', Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated and or 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1A after clause 1 in the first settlement is installed and it is as following

"persons, who have been engaged in casual basis (as defined under clause 11(ii) hereunder) to work in leave/casual vacancies of Messengers, Farrashes, Cash Collies, water Boys, sweepers etc, for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the first settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-96 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengers' staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlement to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 501 and he worked for 72 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 97 days

during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days, and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from servicing owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs W1 to W7. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are

- (1) Whether the petitioner was retrenched in violation of Sec 25F of the I D Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Drakshrama branch on 26-4-82 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of the circulars issued by the management Exs W6 and W7.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12

months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 72 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 340 days in a year in view of the circulars Exs W6 and W7 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W6 is a circular dated 16th November, 1997, Ex. W7 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are entered to them :

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed
- (ii) They be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W7 that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been

re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex W6 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.So uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of

sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employees, Sec. 25-B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case."

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some

interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W6 and W7 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1982 and he is only a casual employee. The circulars Exs. W6 and W7 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioners and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The

point before us is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition, and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Naryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 72 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breakes attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I C. 1979 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their Lordships of the Rajasthan High Court were pleased to hold under Sec 25F for the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no Merits in this application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K VEERAPUNAIIDU, Presiding Officer

APPENDIX OF EVIDENCE IN ITID 36/99(C)

WITNESSES EXAMINED

FOR WORKMAN : WW1: V. ANJANEYULU

FOR MANAGEMENT : MW1: SRI C.R.N. SASTRY

DOCUMENTS MARKED

FOR WORKMAN :

Ex. W1 : 12-7-82 : Service certificate

Ex. W2 : 4-10-89 : Service certificate

Ex. W3 : 6-1-92 : Service certificate

Ex. W4 : 19-7-96 : Service certificate

Ex. W5 : 25-4-97 : Service certificate

Ex. W6 : 24-9-81 : Staff Circular No. 91 issued by G M (Operations) SBI Personnel Dept., Hyderabad

Ex. W7 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad.

DOCUMENTS MARKED FOR MANAGEMENT :

Ex. M1 : List of Ex temporary employees who raised dispute before Asst Labour Commissioner (Central), Visakhapatnam

Ex. M2 : Settlement and Judgments regarding regularisation of services of the temporary employees and casual employees

Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3060.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं एल-12014/17/2001-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3060—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No L-12014/17/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATNAM

PRESENT :

Sri K. Veerapu Naidu, B Sc, B L, Chairman &
Presiding Officer

Dated 18th day of August, 2001

L.T.LD(C) No. 37/99

BETWEEN :

Chinna Venkataratnam

S/o Babulu,

19-4-6, Bankpeta,

Kakinada, East Godavari Dist

Workman

AND

(1) The Chief General Manager
State Bank of India,
Local Head Office, Bank Street,
Hyderabad

(2) The Dy General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramadas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following

AWARD

(1) This is an application filed under Sec 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Main Branch Kakinada in the year 1982 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year

(3) The petitioner worked in the respondent bank for 798 days from 1982 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidate whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec 25G of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec 2A of the I.D. Act, as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management, State Bank of India and the State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India Main Branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of

the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-6-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows:

- (i) Category 'A' Those, who have completed 240 days temporary service in 12 months or less after 1-7-75
- (ii) Category 'B' Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Category 'C' Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows:

"Persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B' and 'C' in clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with

the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was again entered into between the same parties on 30-7-96. It is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers -cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December 1994 will be filled from 1989 panel on the basis of seniority. Therefore, the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(2) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 164 and he worked for 673 days only during the relevant period from 1-7-75 to 31-7-88 while the last candidate absorbed worked for 77 days during the relevant period. It is false to allege that the

settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from servicing owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs W1 to W4. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are:

- (1) Whether the petitioner was retrenched in violation of Sec 25F of the I.D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main Branch in the year 1982 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs W6 and W7.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of

termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 79 days whereas the petitioner worked only for 67.3 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W6 and W7 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex W6 is a circular dated 16th November, 1997, Ex.W7 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W7 that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies

in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex W6 is another circular dated 24th Sept, 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in case of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25-B or Sec 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employees in relation to the Digwadh Colliery Vs Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25-B(1).

"25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a

cession of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer. Sec. 25-B(2) reads as follows :

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case.”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W6 and W7 and the workman was not allowed to work for more than 250 days in a year. This contention has no force because the workman joined in the service in the year 1982 and he is only a casual employee. The circulars Exs. W6 and W7 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlement entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regulation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the

workmen is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and others etc reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec 25F of the ID Act

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 673 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement

(36) In support of his contention the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I C 1370 between Pali Central Cooperative Bank Ltd., Pali Vs Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec 25F of the ID Act that

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec 25F"

Therefore, the above said decision squarely applies to the case on hand

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec 25F of the ID Act. Therefore, I see no Merits in the application

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is direct to bear its own costs

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K VEERAPUNAIIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN : WW1 : CH. VENKATA

RATNAM

FOR MANAGEMENT : MW1 : C.R.M. SASTRY

DOCUMENTS MARKED FOR WORKMAN :

Ex W1	5-8-1988	Service certificate
Ex W2	20-11-1985	Service certificate
Ex W3	2-4-1998	Service certificate
Ex W4	12-5-1997	Service certificate
Ex W5	6-4-1992	Penal List
Ex W6	24-9-1981	Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept, Hyderabad
Ex W7		Staff circular No 91 issued by General Manager (Operations) SBI Personnel Dept, Hyderabad

DOCUMENTS MARKED FOR MANAGEMENT :

Ex M1	List of Ex temporary employees who raised dispute before Asstt Labour Commissioner (Central), Visakhapatnam
Ex M2	Settlement and Judgments regarding regularisation of services of the temporary employees and casual employees
Ex M3	Details of list of candidates appointed who are eligible to be juniors to the petitioners

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3061 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एव श्रम

न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/18/2001-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3061.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/18/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATANAM

PRESENT :

Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

I.T.L.D(C)No. 38/99

BETWEEN :

Akula Suribabu
S/o. Yellaiah
19-4-6, Barkpeta,
Kakinada, East Godavari Dist. ...Workman

AND

- (1) The Chief General Manager
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, Advocates for workman and Sri M. Ramdas, Advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Main Branch Kakinada in the month of July 1988, in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regulation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 299 days from 1988 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act. namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management State Bank of India and State Bank of India Staff federation. The petitioner was engaged as a Messenger in State Bank of India, Main Branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of

the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-1997. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-75.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1A after clause 1 in the first settlement is installed and it is as follows

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the first settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers -cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion full time non-messengers' staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointment ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 385 and he worked for 15.5 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list

worked for 97 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W5. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main Branch, Kakinada in the month of July, 1988 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India, Main Branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W3 and W4.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked

for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 97 days whereas the petitioner worked only for 15.5 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex W4 is a circular dated 16th November, 1997, Ex W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., there who have put in 240 days temporary service in 12 calendar months, have been absorbed.
 - (ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.
- (22) It is further instructed in Ex. W5 that.
- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
 - (b) Those, who have completed 270 days temporary service as above and have been

re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex W4 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their Workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I D. Act and it is as follows:

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman had actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No un-interrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25-B(1).

"25-B(1) . a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of

sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman ”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer Sec 25-B(2) reads as follows

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case ”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their

lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Here the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1988 and he is only a casual employee. The circulars Exs W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff Federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the

regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition, and Regulation Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board *Vs.* Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 15.5 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of *malafide* breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali *Vs.* Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to held under Sec. 25F for the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no Merits in this application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN : WW1 : A. Suri Babu
FOR MANAGEMENT : MW1 : C.R.M. Sastry

DOCUMENTS MARKED

FOR WORKMAN :

Ex. W1 : 19-7-96 : Service certificate
Ex. W2 : 25-4-97 : Service certificate
Ex. W3 : 6-4-92 : Penal List
Ex. W4 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Deptt., Hyderabad.
Ex. W5 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Deptt., Hyderabad.

FOR MANAGEMENT :

Ex. M1 : List of Ex. temporary employees who raised dispute before Asst. Labour Commissioner (Central), Visakhapatnam.
Ex. M2 : Settlements and Judgments regarding regularisation of services of the temporary employees and casual employees.
Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioners.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3062.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/19/2001-आईआर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3062.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No L-12014/19/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT VISAKHAPATANAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B. L., Chairman & Presiding Officer

Dated 18th day of August, 2001

I.T.I.D(C) 39/99

BETWEEN:

Dondapati Prabhath Kumar
S/o. D.S. George,
D. No 14-4-6, Bankpct,
Kakinada E G Dist

...Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramdas, Advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Treasury Branch, Kakinada on 10-3-82 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 745 days from 1982 to 1997 with breaks and he was terminated on 1-4-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25O of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. on this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management State Bank of India and State Bank of India Staff Federation. The petitioner was engaged as a messenger in State Bank of India, Treasury Branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was

appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 1-4-97. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 10(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows.

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows.

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Colliers, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C'

in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1980 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption or temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive upto March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was again entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion full time

non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank

(11) Coming to the panel of daily wagers enlisted in 1998 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the Management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this

workman was 589 and he worked for 59 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 77 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W5. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

(1) Whether the petitioner was retrenched in violation of Sec. 25F of the I D. Act ?

(2) Whether the petitioner is entitled for reinstatement with back wages as prayed for ?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Treasury branch on 10-3-82 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main branch, Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W3 and W4.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior and the last man out of the empanelled list have worked for 77 days whereas the petitioner worked only for 59 days during the relevant period from 1-7-87 to 31-7-88. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W4 is a circular dated 16th November, 1997, Ex. W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W5 that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.

- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W4 is another circular dated 24th Sept., 1981 where under it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I.D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadeh Colliery Vs. Their Workmen, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I.D. Act and it is as follows :

“Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1)

“25 B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of

sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman "

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be 'continuous service' under an employer Sec 25-B(2) reads as follows

"Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer and for less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, if any other case "

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 2 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1982 and he is only a casual employee. The circulars Exs W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointments was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the contract Labour Abolition, and Regulation Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place some body else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I D Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 59 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I D Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Co-operative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their Lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I D Act that

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F"

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall

under Sec. 25F of the I. D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and Nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : WITNESSES EXAMINED FOR

Workman	Management
WW1 D Prabhat Kumar	MW1 Sr. C R. M. Sastry

Documents marked for workman :

Ex. W1 : 5-8-88 : Service Certificate.
Ex. W2 : 29-12-92 : Service Certificate.
Ex. W3 : 7-5-97 : Service Certificate.
Ex. W4 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.
Ex. W5 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Documents marked for management :

Ex M1 : List of Ex-temporary Employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam.
Ex M2 : Settlements and Judgments regarding regularisation of services of the temporary employees and casual employees.
Ex M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3063.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/20/2001-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3063.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No L-12014/20/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, VISAKHAPATNAM

PRESENT:

Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated . 18th day of August, 2001

L.T.LD(C) 40/99

BETWEEN:

Saladi David Raju,
S/o Surya Rao,
19-4-6, Bankpete,
Kakinada E.G. Dist

Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20.Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramdas, Advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

- (1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Samarlakota branch on 1-1-85 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Samarlakota branch. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 288 days from 1985 to 1995 with breaks and he was terminated in the year 1995 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for long period. As list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25F of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a Messenger in State Bank of India, Samarlakota branch, in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore the concept of "retrenchment" cannot be extended. The petitioner is false to allege that the services of the petitioner were terminated from

the year 1995. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows.

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows.

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Collics, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and

1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive upto March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous

12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the Management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. The seniority position of this workman was 318 and he worked for 88 days only during the relevant period between 1-7-75 to 31-7-88 while the last candidate absorbed in the list worked for 88 days during the relevant period. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is stopped from questioning the validity of the settlements. With regard to the list of candidates

set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 240 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-91 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W5. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 to M3.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act ?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for ?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Samarlakota branch on 1-1-85 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India, Samarlakota branch Kakinada without any notice from 1-4-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W4 and W5.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and

the petitioner is not a senior and the last man out of the empanelled list have worked for 88 days whereas the petitioner worked only for 88 days during the relevant period from 1-7-97 to 31-7-98. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec 25F of the I D Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex W4 is a circular dated 16th November, 1997, Ex W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
 - (ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.
- (22) It is further instructed in Ex W5 that
- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
 - (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
 - (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex W4 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25-B or Sec 25F of the I D Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadeh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec 25-B of the I D Act and it is as follows

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec 25B(1)

"25-B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed

to be 'continuous service' under an employer. Sec. 25-B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case."

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise

does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1983 and he is only a casual employee. The circulars Exs. W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the contract Labour Abolition, and Regulation Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place some body else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. The petitioner worked for 59 days during the crucial period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel place reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Co-operative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to held under Sec. 25F the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and Nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : WITNESSES EXAMINED :

For workman :

WW1 S. David Raju

For management

MW1 Sr. C. R. M. Sastry.

Document marked for workman :

Ex. W1 : 16-8-89 : Service Certificate

Ex. W2 : 10-4-97 : Service Certificate

Ex. W3 : 25-11-91 : Panel list.

Ex. W4 : 24-3-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Ex. W5 : 16-11-89 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Document marked for management :

Ex. M1 : List of Ex-Temporary Employees who raised dispute before Assistant Labour Commissioner (Central), Visakhapatnam.

Ex. M2 : Settlement and Judgments regarding regularisation of services of the temporary employees and casual employees.

Ex. M3 : Details of list of candidates appointed who are alleged to be juniors to the petitioner.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3064.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं त्रिम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/21/2001-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3064.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/21/2001-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE**THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT : VISAKHAPATNAM****PRESENT:**

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman Industrial
Tribunal & Presiding Officer, Labour Court, Visakhapatnam.

Dated . 18th day of August, 2001

I.T.I.D(C). 13/2000

BETWEEN:

Sadi Satyanarayana,
S/o. S. Narasimhulu,
9-137/1, Venkataramanagar,
C/o K. Acha Rao, Indrapalem,
Kakinada-6

.... Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, VisakhapatnamManagement

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramadas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State bank of India, Main Branch, Kakinada on 13-3-89 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 96 days from 13-3-89 to July, 1991 and he was terminated from July, 1991 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The

management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act. namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of penal of candidates prepared as per the settlement entered into between the management Bank of India, State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger in State Bank of India, Main branch Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from July, 1991. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A' : Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975

- (ii) Category 'B' : Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C' : Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement on clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1980 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during

the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption or temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above, and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which

may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the Management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs W1 to W5. On behalf of the management, the Chief Manager, Personnel,

Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Ex M1.

(17) Heard both sides.

(18) The points that arise for consideration are

(1) Whether the petitioner was retrenched in violation of Sec 25F of the I D Act?

(2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, main branch Kakinada on 13-3-89 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India main branch, Kakinada without any notice from July, 1991. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs W3 and W4.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to July 1991, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec 25F of the I D Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars issued by the General Manager (Operations), State Bank of India, Hyderabad. A circular dated 16th November, 1997 and another circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them

(i) The temporary employees, who have worked in subordinate cadre for 270 days or more

during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days' temporary service in 12 calendar months, have been absorbed.

- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us
- (c) Under the circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Another circular dated 24th Sept, 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadih Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled..... No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25-B(2) reads as follows :

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case."

(26) In the above said decision, their Lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the abovesaid decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the abovesaid judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their Lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(29) Even applying the abovesaid decision to this case, the workman did not completed 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exts. W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1989 and he is only a casual employee. The circulars were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlement do not bind the petitioner

as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Secs. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench of Rajasthan

High Court reported in 1994 LAB I.C. 1370 between Pali Central Co-operative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their Lordships of the Rajasthan High Court were pleased to be held under Sec. 25F the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services does not violate Sec. 25F."

Therefore, the abovesaid decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

Appendix of Evidence

Witnesses Examined for

Workman : Management :
WW1 : S. Satyanarayana MW1 Sri S.R.M Sastry

DOCUMENTS MARKED FOR WORKMAN:

Ex. W1 : 9-4-90 Service certificate.
Ex. W2 : 23-4-90 : Service certificate.
Ex. W3 : 25-10-90 : Service certificate
Ex. W4 : 29-10-90 : Service certificate
Ex. W5 : 19-9-91 : Service certificate.

DOCUMENTS MARKED FOR MANAGEMENT:

Ex M1: Settlements and Judgments regarding regularisation of service of the temporary employees and casual employees.

Illegible

Presiding Officer
Industrial Tribunal cum Labour Court
Visakhapatnam

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3065.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं त्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/22/2001-आई आर (बी- I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3065.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/22/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, VISAKHAPATANAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman
& Presiding Officer,

Dated : 18th day of August, 2001

L.T.I.D(C) No. 14/2000

BETWEEN:

Mummidi Rambabu,
S/o. M Ramachandra Rao,
9-137/1, Venkataramanagar,
C/o. Atcha Rao, Indrapalem,
Kakinada.

Workman

AND

(1) The Chief General Manager
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.

(2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam.-20 ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramadas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, main branch, Kakinada. On 19-9-1989 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, main branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 88 days from 19-9-89 to 10-12-89 and he was terminated on 10-12-89 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidate whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger in State Bank of India, main branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not

appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 10-12-89. In fact, the management did not have the need to employ the workman from 10-12-89 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Categories 'A' : Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Categories 'B' : Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Categories 'C' : These, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1983 to 1992."

Therefore, the casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank if situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption or temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than

those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above, and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is stopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure

to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, and 196 days and 200 days respectively. The circular dated 24-9-91 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent

(16) On behalf of the workman, the workman is examined as WW1 and got marked Ex. W1. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Ex. M1.

(17) Heard both sides

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I D Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, main branch Kakinada on 19-9-89 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India main branch, Kakinada without any notice from 10-12-1969. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 10.12.89 the alleged date of termination. It is also further contention that by virtue of the 5 settlements dated 17.11.87, 16.7.88, 17.10.88, 9.1.91 and 30.10.96 into between the State Bank of India Staff Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected

for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year as per the circular issued by the General Manager (Operations), State Bank of India, Hyderabad. A circular dated 16th November, 1997 and another circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1978 or a little later in the matter of absorption and the following facilities are extended to them.

(i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed

(ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Another circular dated 24th Sept., 2001 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25-F or Sec 25B of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workmen, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec 25 B of the I. D. Act and it is as follows.

"Though Sec 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25-B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave as on accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec 25-B(2) reads as follows

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
- (ii) Two hundred and forty days, in any other case.
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety five days, in the case of a workman employed below ground in mine, and
 - (ii) one hundred and twenty days, in any other case"

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their Lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further

contends that because of the circular issued by the management and the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1989 and he is only a casual employee. The circulars were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner as alleged by him is illegal.

(33) The learned counsel appearing for the workman contends that the service of the petitioner some contract labour is engaged and his work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Regulation and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary Haryana State Electricity Board Vs. Suresh and Others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. His services were disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I C 1370 between Pali Central Co-operative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their Lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F"

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I.D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August 2001

K. VEERAPU NAIDU, Presiding Officer

Appendix of Evidence

Witnesses Examined

For Workman	For Management
WW1 M RAMBABU	MW1 Sri C R M Sastry

Documents Marked

FOR WORKMAN

Ex W1 10-2-90 Service certificate

FOR MANAGEMENT

Ex M1 Settlements and Judgments regarding regularisation of service of the temporary employees and casual employees

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3066.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/23/2001-आई नं. 'बी 1']

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October 2001

S.O. 3066—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No I -12014/23/2001-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

THE COURT OF INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, VISAKHAPATNAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B. L., Chairman & Presiding Officer

Dated 18th day of August, 2001

I.T.L.D. (C) 15/2000

BETWEEN:

Godtha Veera Venkata Satyanarayana,
S/o Surayya,
9-137/1, Venkataramanagar,
C/o K. Acha Rao, Indrapalem,
Kakinada-6

—Workman

And

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad
- (2) The Dy. General manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 — Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M.

Sarveswara Rao advocate for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India Main Branch, Kakinada on 14-5-90 for a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, main branch Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 85 days from 14-5-90 to 8-8-90 and he was terminated on 8-8-90 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 240 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management and State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger in State Bank of India, Main branch Kakinada in a leave vacancy. As per the settlement mentioned above the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was

prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 14-5-1990. In fact, the management did not have the need to employ the workman from 14-5-90 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows:

- (i) Categories 'A', Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975
- (ii) Categories 'B', Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) Categories 'C', Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 of minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

As per the 1st settlement which was agreed to settle the temporary employees being considered for permanent appointment in the management bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is inserted and it is as follows:

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Porters, Cash Collectors, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service

against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period, i.e. 1-7-88 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties. On 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive up to 1997 filling the vacancies existing/arrived at as on 31-12-1994 from, the panels prepared in the years 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengers' vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengers staff in a usual manner. Therefore, an agreement was entered on 27-2-97 that both the panels

of temporary employees and daily wagers/casual labours would lapse on 31-3-97

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no claim for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 and the petitioner's case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the Management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not

binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlement. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-8-91 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlement 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1. On behalf of the management, the Chief Manager Personnel in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1.

(17) Heard both sides.

(18) The points that arise for consideration are

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I.D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main Branch, Kakinada on 14-5-90 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 8-8-90. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management.

(20) On the other hand the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 8-8-90 the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and

0-10-96 entered into between the State Bank of India Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec 25F of the I D Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year as per the circulars issued by the General Manager (Operations), State Bank of India, Hyderabad. A circular dated 16th November 1997, and another circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them:

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in that:

- (a) No temporary employee should be allowed, under any circumstances to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to

age/educational qualifications, should be offered temporary/permanent appointment.

(23) Another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25B or Sec 25F of the I D Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwath Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec 25B of the I D Act and it is as follows:

“Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.

No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec 25B(1):

“25-B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed

to be "continuous service" under an employer Sec 25-B(2) reads as follows

"Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer —

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine and

(ii) two hundred and forty days, in any other case,

(b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine, and

(ii) one hundred and twenty days, in any other case "

(26) In the above said decision, their lordships have considered the service of the workman for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on

casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management and the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1990 and he is only a casual employee. The circulars were issued in the years 1979 and 1981 and they were issued much earlier than the date joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management and accordingly the panels of daily wagers were enlisted upto 30-3-92 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition, and Regulation) Act must obtain licence under Sec 7 of the Act and no such licence is forthcoming

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and others etc. reported in AIR 1999 Supreme Court 1168 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to his termination and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto his termination and thereafter they are not taking anyone on temporary basis in the leave vacancies. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that

"the termination of the services of the daily employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F"

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I.D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE: WITNESSES EXAMINED :

FOR WORKMAN : WW1 G V V Satyanarayana

FOR MANAGEMENT : MW1 Sri C R M Sastry

DOCUMENTS MARKED

FOR WORKMAN EX W1 Service certificate

FOR MANAGEMENT EX M1 Settlements and judgements regarding regulation of service of the temporary employees and casual employees

नई दिल्ली, 17 अक्टूबर 2001

का.आ. 3067. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के सदस्य-योगियों और उनके कार्यकारी के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[स. एल-12014/24/2001 आईआर (अ-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3067 — In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001

[No L-12014/24/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

THE COURT OF INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT VISAKHAPATNAM

PRESENT:

Sri K. Veerapu Naidu, B.Sc. B.L., Chairman & Presiding Officer

Dated 18th day of August, 2001

LT.LD(C) No. 16/2000

BETWEEN.

Inakoti Satvanarayana,
S/o I. Vadapalli,
D No 9-137/1, Venkataramana Nagar,
C/o K. Acha Rao, Indrapalem,
Kakinada

Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 .Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M Ramadas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State bank of India, Main Branch, Kakinada on 23-9-90 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main branch Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 84 days from 23-9-90 to 7-7-90 and he was terminated on 7-7-90 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case

of panel of candidates prepared as per the settlement entered into between the management State Bank of India and State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger in State Bank of India Main branch Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 7-7-1990. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows:

- (i) Category 'A'. Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B'. Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C'. Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 of minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd

settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :-

“persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, sweepers etc , for any of the periods mentioned in category ‘A’, ‘B’, and ‘C’ in Clause 1 will be given a chance for being considered for permanent appointment in the bank’s service against vacancies likely to arise from 1988 to 1992 ”

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was entered into between the same parties. On 30-7-96 it is the fifth settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from

the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to indentify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlement 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are not claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is also false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Ex. W1. On behalf of the management, the Chief Manager, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Ex. M1.

(17) Heard both sides.

(18) The points that arise for consideration are .

(1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?

(2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main Branch Kakinada on 23-9-90 permanent vacancy and he was continued in service at various places till his services were

finally terminated at State Bank of India Main Branch, Kakinada without any notice from 7-7-90. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disenfranchise him to claim a regular appointment because of two circulars issued by the management.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 7-7-90 the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-95 entered into between the State Bank of India Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec 25F of the I.D. Act.

(21) It will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year as per circulars issued by the General Manager (Operations), State Bank of India, Hyderabad. A circular dated 16th November, 1997, and another circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them :

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They will be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(iii) It is further instructed that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(22) Another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(23) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadih Colliery vs Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

“Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....

No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

“25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(24) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer Sec. 25-B(2) reads as follows :

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case.”

(25) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(26) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(27) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said

judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(28) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(29) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Here the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(30) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1990 and he is only a casual employee. The circulars were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(31) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wage. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreements entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees.

The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(32) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition and Regulation Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(33) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(34) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide break attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(35) In support of his contention in the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

(36) Therefore, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in the application.

(37) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE : ITID(C) NO. 16/2000

WITNESSES EXAMINED :

FOR WORKMAN : WW1 : I. Satyanarayana

FOR MANAGEMENT : MW1 : Sri C.R.M. Sastry

DOCUMENTS MARKED :

FOR WORKMAN : Ex. W1 : 23-07-90 Service certificate.

FOR MANAGEMENT : Ex M1 Settlements and judgments regarding regularisation of service of the temporary employees and casual employees.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3068.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/25/2001-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3068.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 16-10-2001.

[No. L-12014/25/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATANAM

PRESENT :

Sri K. Veerapu Naidu, B.Sc., B.L., Chairman & Presiding Officer.

Dated : 18th day of August, 2001

I.T.ID(C) 17/2000

BETWEEN :

Arji Gopala Krishna,
S/o. A. Vasudeva,
D No 9-137/1, Venkataramana Nagar,
C/o K. Acharao, Indrapalem,
Kakinada-6

.... Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M Sarveswara Rao, advocates for workman and Sri M Ramdas, advocate for management.

Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Main Branch, Kakinada on 21-10-88 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 89 days from 21-10-88 to 22-2-89 and he was terminated on 22-2-89 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary post and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-1981 directing the temporary employees should not be engaged

for more than 200 days in a calendar year. The management did not follow the rule provided under Sec 25G of the I.D. Act namely "last come first go" The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs 90 per day at the time of retrenchment. Hence this application

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management bank and State Bank of India Staff Federation. The petitioner was engaged as a Temporary Messenger in State Bank of India Main Branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 22-2-89. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above

would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992 "

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the first settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption or temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

7. In pursuance of the conciliation proceedings, a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily

wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Ex W1. On behalf of the management, the Chief Manager, State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Ex M1.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main branch, Kakinada on 21-10-88 in a permanent vacancy and he was continued in service at various places till his services were finally

terminated at State Bank of India Main Branch, Kakinada without any notice from 22-2-89. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months proceeding to 22-2-89, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year as per the circulars issued by the General Manager (Operations), State Bank of India, Hydrab. d. A circular dated 16th November, 1997, and another is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in that :

- (a) No temporary employee should be allowed, under any circumstances to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Another circular dated 24th Sept, 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadeh Colliery Vs Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled... No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25 (B)(1)

"25-B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec. 25-B(2) reads as follows :

"Where a workman is not continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case "

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said

judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W4 and Exs. W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1988 and he is only a casual employee. The circulars were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The

point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition, and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 21-10-88 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 thereafter they are not taking any one on temporary basis in the leave vacancies. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—Does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall

under Sec. 25F of the I. D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE :

WITNESSES EXAMINED :

For workman :

WW1 : A. Gopala Krishna

For Management :

MW 1 : Sri C. R M. Sastry

Documents marked :

For Workman :

Ex W1 : 31-8-91 Service Certificate

For Management :

Ex M1 : Settlements and Judgments regarding regularisation of service of the temporary employees and casual employees.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3069.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/26/2001-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3069.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/26/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT, VISAKHAPATANAM¹****PRESENT:**

Sri K. Veerapu Naidu, B Sc., B L., Chairman & Presiding
Officer

Dated : 18th day of August, 2001

L.T.I.D(C) 18/2000

BETWEEN:

Yanamadala China Veerabhadra Rao,
S/o Y. Tata Rao,
D. No. 9-137/1, Venkataramana Nagar,
C/o K. Acha Rao, Indrapalem,
Kakinada-6

Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20 . Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M Sarveswara Rao, advocates for workman and Sri M Ramdas, advocates for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State bank of India, Main Branch, Kakinada on 19-10-90 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year

(3) the petitioner worked in the respondent bank for 86 days from 19-10-90 to 16-1-91 and he was terminated on 16-1-91 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel, several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-1981 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D Act. as this is not a case of discharge or dismissal, retrenchment or termination of services, while it is a case of penal of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger in State Bank of India Main branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 16-1-1991. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read

with Section 10(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A' : Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B' : Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C' : Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-98 as per the said settlement clause-1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashcs, Cash Collics, Water Boys, Sweepers etc , for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties as 9-1-91 extending the benefit to the cases of

temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the disputes in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive upto March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings, a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengers' vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 managerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengers' staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above, and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give an right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his

seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlement, with regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked EX W1. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Ex M1.

(17) Heard both sides

(18) The points that arise for consideration are

- (1) Whether the petitioner was retrenched in violation of Sec 25F of the I.D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main Branch, Kakinada on 19-10-90 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India, Main Branch, Kakinada without any notice from 16-1-91. It is further contended that the management deprived him to serve for

240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management

(20) On the other hand the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months prior to 16-1-91, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the management and the Memorandum of understanding dated 27-2-97 the name of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec 25F of the I D Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to service for more than 240 days in a year as per the circulars issued by the General Manager (Operations), State Bank of India, Hyderabad. A circular dated 16th November, 1997 and another circular dated 16th November, 1979 where under the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are entered to them

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz, those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They will be allowed relaxation in age and educational qualification and the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in that

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under the circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Another circular dated 24th September, 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25-B or Sec 25F of the I D Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadeh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec 25-B of the I D Act and it is as follows

“Though Sec 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

“25B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer. Sec. 25-B(2) reads as follows :

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer and for less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, if any other case ”

(26) In the above said decision, their Lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 2 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their Lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as “continuous service” irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1990 and he is only a casual employee. The circulars were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management and accordingly, the panels of daily wagers

were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wage. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Regulation and Regulation and Abolition) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and Others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with

breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 Lab. I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that :

“the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F.”

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and Nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

L.T.L.D. (C) 18/2000

WITNESSES EXAMINED

For workman :

WW1 : Y. Chinavcerabhadra Rao

For Management :

MW 1 : Sri C. R. K. Sastry

Documents marked

For Workman :

Ex W1 : 17-4-91 : Service Certificate

For Management :

Ex. M1 . Settlements and Judgments regarding regularisation of service of the temporary employees and casual Employees.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3070.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[मं. एल-12014/27/2001-आई आर (सी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3070—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/27/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, VISAKHAPATNAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman and
Presiding Officer

Dated : 18th day of August, 2001

I.T.LD(C) No. 19/2000

BETWEEN:

Yendamuri Veerababu,
S/o Lovaraju,
D. No. 9-137/1, Venkataramana Nagar,
C/o K. Acha Rao, Indrapalem,
Kakinada-6

.... Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20.Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M

Sarveswara Rao, advocates for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following:

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State bank of India, main branch Kakinada on 20-11-90 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India main branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) the petitioner worked in the respondent bank for 86 days from 20-4-90 to 7-4-91 and he was terminated on 7-4-1991 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a Calendar year. The management did not follow the rule provided under Sec. 25 of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management bank and State Bank of India Staff Federation. The petitioner was engaged as a Temporary Messenger in State Bank of India main branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative

difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 7-4-91. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) **Category 'A':**—Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) **Category 'B':**—Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975
- (iii) **Category 'C':**—Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 of Minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-98 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Colliers, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

7 In pursuance of the conciliation proceedings, a settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements to 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlement. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, main branch Kakinada on 20-11-90 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 7-4-91. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked

for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec 25F of the I D Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year as per the circulars issued by the General Manager (Operations), State Bank of India, Hyderabad circular dated 16 November, 1997 and another is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days' temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed that

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.
- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more

during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25 B or Sec 25F of the I D Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs Their workmen, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec 25F read with Sec 25 B of the I D Act and it is as follows

“ Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these ”

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec 25 B(1)

“ 25 B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman ”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be "continuous service" under an employer. Sec 25 B(2) reads as follows

“ Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case "

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1990 and he is only a casual employee. The circulars were issued in the years 1979 and and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forth coming

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the

parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not served for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of *mala fide* breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention it the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to held under Sec. 25F of the I.D. Act that :

“the termination of the services of the daily employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F.”

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in this application.

(38) In the result, the petition is dismissed and Nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE:

WITNESSES EXAMINED : FOR

WORKMAN:

WW1 Y. Veerababu

MANAGEMENT:

MW1 Sri C.R.M. Sastry

Documents marked for workman :

Ex. W1 2-9-96 Service Certificate.

Documents marked for Management :

Ex.M1 : Settlements and judgments regarding regularisation of services of the temporary employees and casual employees.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3071.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/28/2001-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3071.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No.L-12014/28/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT VISAKHAPATANAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman & Presiding Officer

Dated : 18th day of August, 2001

I.T.LD(C) No. 20/2000

BETWEEN:

Gudapati Swamy Raju,
S/o. G Veeraju,
D. No. 9-137-1, Venkataramana Nagar,
C/o K. Acha Rao, Indrapalem,
Kakinada-6.

.... Workman

AND

(1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.

- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocate for workman and Sri M. Ramdas, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, main branch Kakinada on 3-1-89 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Main Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 89 days from 3-1-89 to 5-4-89 and he was terminated on 5-4-89 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filled. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-91 directing the temporary employees should not be engaged for more than 200 days in a Calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs.90/- per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management State Bank of India, and the State Bank of India Staff federation. The petitioner was engaged as a Temporary Messenger in State Bank of India main branch, Kakinada in a leave vacancy. As per the settlement mentioned above, the empanelled candi-

dates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 5-4-89. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 10(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A':—Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B':—Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C':—Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follow :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/Casual vacancies of

Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 Zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the Bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceedings on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings, a settlement was again entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management

and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/casual labours would lapse on 31-3-97.

(9) The vacancies as agreed upon by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their service for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment on permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his

seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates are seniors to the workman and they worked for 241 days, 217 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Ex. W1. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Ex. M1.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I.D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Main Branch on 3-1-89 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 5-4-89. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 5-4-89, the alleged date of termination.

It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year as per the circulars issued by the General Manager (Operations), State Bank of India, Hyderabad circular dated 16th November, 1997 and another circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them.

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications should be offered temporary/permanent appointment

(23) Another circular dated 24th September, 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months

(24) The learned counsel appearing for the workman contends that because of the above said two circulars the workman was not allowed to work more than 240 days in calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec 25-B or Sec 25F of the I D Act. The learned counsel appearing for the workman also further contends that Sec 25B clause (1) where a workman was not allowed to work due to no fault on his part he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadih Colliery Vs Their workman wherein their Lordships were pleased to give the meaning of the expression continuous service for not less than one year under Sec 25F read with Sec 25-B of the I D Act and it is as follows

Though Sec 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled. No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.

Their Lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec 25-B(1)

25 B(1) a workman shall be said to be in continuous service, for a period if he is for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or a cessation of work which is not due to any fault on the part of the workman.

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed

to be continuous service under an employer. Sec 25-B(2) reads as follows

Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer and for less than—
 - (i) ninety-five days in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, if any other case

(26) In the above said decision their Lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruption

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore their Lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as continuous service irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on

casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exts. W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1989 and he is only a casual employee. The circulars were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place some body else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and Others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in a year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Secs. 25F and 25B of the I.D. Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention the management's counsel placed reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Cooperative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that

“the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F”

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I.D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and Nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE :

AND

WITNESSES EXAMINED : FOR**WORKMAN:****MANAGEMENT:**

WW1 G. Swamy Raju

MWI Sri C.R.N. Sastry

Documents marked for workman :

Ex. W1 : 29-6-90 : Service Certificate.

Documents marked for Management :

Ex. M1 : Settlements and judgments regarding regularisation and services of the temporary employees and casual employees.

नई दिल्ली, 17 अक्टूबर, 2001

का.आ. 3072.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/29/2001-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3072.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 16-10-2001.

[No. L-12014/29/2001-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT : VISAKHAPATANAM

PRESENT:

Sri K. Veerapu Naidu, B.Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

LT.LD(C) No. (C) 30/2000**BETWEEN:**

Salagrama Voora Venkata Satyanarayana,
S/o. Venkata Seshagiri Jagannadham
Vinjaram, Tallarevu Mandalam
E.G. Dist.

....Workman

1. The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.

2. The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. ...Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramdas, Advocate for management, upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger in the State Bank of India, Yanam branch in the month of June 1985 is a permanent vacancy and he served at different places till he was finally terminated at State Bank of India Yanam branch, East Godavari District. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 637 days from June 1985 to 23-3-97 with breaks and he was terminated on 23-3-97 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary basis posts and the petitioner was also a member in that panel, several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. As list of junior candidates whose services are absorbed in filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 240 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act namely "last come first go". The management of the petitioner is only to accommodate another employee. The management was paying Rs. 90 per day at the time of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act. on this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case

of penal of candidates prepared as per the settlement entered into between the management and the State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger in State Bank of India, Yanam branch, in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 23-3-97. In fact, the management did not have the need to employ the workman from 23-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the Federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Category 'A', those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Category 'B', those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C', those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd

settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as follows :

"persons, who have been engaged in casual basis [as defined in clause 11(i) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Colliers, Water Boys, Sweepers etc., for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992."

Therefore, casual/daily wagers were also to be considered for permanent absorption along with the temporary employees who are also drawing scale wages.

(6) The 4th settlement was entered into between the same parties on 9-1-91 extending the benefit to the cases of temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared zonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive upto March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings settlement was entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers-cum-casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the

messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full non-messengerial staff in the usual manner. Therefore, an agreement was entered on 30-7-96 that both the panels of temporary employees and daily wagers/causal labours would lapse on 31-3-97.

(9) The vacancies as agreed upto by the above said settlements and the memorandum of understanding were filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlements 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidate have no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

(12) It is further pleaded that the temporary service rendered during the period from 1-1-75 to 31-7-88 is only to be taken for permanent absorption and number of days working subsequent to this period are not counted as per the agreement. Since the panels were already lapsed on 31-3-97 engaging their services for subsequent period does not arise. It is further pleaded that as per the settlements 1 to 5 the vacancies have been identified and the ex-temporary employees in the panels were absorbed on the basis of seniority.

(13) It is further pleaded that as per the settlement reached between the Staff Federation and the Management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank of India Staff Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services are unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from serving owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W5. On behalf of the management, the Chief Manager, Personnel, in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 and M2.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger in the State Bank of India, Yanam branch in the year 1985 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Yanam branch, Kakinda without any notice from 24-3-97. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. 4 and 5.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12 months preceding to 1-4-97, the alleged date of termination. It is also the further contention that by virtue of the 4 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Staff Federation and the Management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered for filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case as retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W4 and W5 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W4 is a circular dated 16th November, 1997. Ex. W5 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them :

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an view. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days 'temporary service' in 12 calendar months, have been absorbed.
- (ii) They be allowed relaxation in age and educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W5 that :

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies

in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

- (c) Under no circumstances, candidates, who do not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W4 is another circular dated 24th Sept., 1981 where under it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25-B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their Workmen, wherein their lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

"Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman had actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No uninterrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these."

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

"25-B(1) a workman shall be said to be in continuous service, for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman."

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be 'continuous service' under an employer. Sec 25-B(2) reads as follows

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
 - (ii) two hundred and forty days, in any other case,
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine, and
 - (ii) one hundred and twenty days, in any other case.”

(26) In the above said decision, their lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 12 calendar months preceding to the alleged retrenchment either with interruptions or otherwise

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgment with some interruptions. Therefore, their lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as 'continuous service' irrespective of the interruptions or any break of service

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman

as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Here the question of their termination periodically or otherwise does not arise. Any way, that aspect will be dealt separately at a later stage

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs W4 and W5 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1983 and he is only a casual employee. The circulars Exs W4 and W5 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the staff federation and the management (as contained in Ex M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management. Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workman is that the termination of the petitioner, as alleged by him, is illegal

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the work is perennial in nature

and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour Abolition, and Regulation Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-3-97 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of mala fide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel place reliance on a Division Bench decision of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Co-operative Bank Ltd., Pali Vs. Sunil Kumar Sharma wherein their lordships of the Rajasthan High Court were pleased to hold under Sec. 25F of the I.D. Act that :

"the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F."

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil Award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 18th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

**Appendix of evidence :
Witnesses examined : For**

Workman :	Management
WW1 S.V.V. Satyanarayana	MW1 Sri. C. R. M. Sastry.

Documents marked for workman :

Ex. W1 : 27-6-95 : Service Certificate
Ex. W2 : 30-4-98 : Service Certificate
Ex. W3 : 25-11-9 : Panel list.
Ex. W4 : 24-9-81 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.
Ex. W5 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Department, Hyderabad.

Documents marked for management :

Ex. M1 : List of Ex-Temporary Employees who raised dispute before Industrial cum-Labour-Court (Central), Visakhapatnam.
Ex. M2 : Settlement and Judgments regarding regularisation of service of the temporary employees and casual employees.

नई दिल्ली, 17 अक्टूबर, 2001

का. आ. 3073.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[सं. एल-12014/30/2001-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th October, 2001

S.O. 3073—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the

employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 16-10-2001.

[No. L-12014/30/2001-JR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATANAM

PRESENT:

Sri K. Veerapu Naidu, B. Sc., B.L., Chairman &
Presiding Officer

Dated : 18th day of August, 2001

LT.LD(C) No. 29/2000

BETWEEN:

Kollu Sanjeeva Rao,
S/o. Paradesi Rao,
Pallipalem,
Kajaluru (M),
East Godavari Distt.

Workman

AND

- (1) The Chief General Manager,
State Bank of India,
Local Head Office, Bank Street,
Hyderabad.
- (2) The Dy. General Manager,
State Bank of India,
Zonal Office, RTC Complex,
2nd Floor, Visakhapatnam-20. Management

This application coming on for final hearing before me in the presence of Sri M. Suryanarayana and Sri M. Sarveswara Rao, advocates for workman and Sri M. Ramesh, advocate for management. Upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is an application filed under Sec. 2A(2) of the Industrial Disputes Act, 1947 for reinstatement with back wages.

(2) The case of the petitioner is that he was appointed as Messenger and water boy in the State Bank of India, Yanam branch in the month of Nov., 1985 in a permanent vacancy and he served at different places till he was finally terminated at State Bank of India, Yanam Branch, Kakinada. The management did not allow the workman to work more than 240 days in a year with a view to deprive him to claim regularisation on the ground that he worked more than 240 days in a year.

(3) The petitioner worked in the respondent bank for 266 as water boy and 305 days as messenger from 1985 to 30-10-96 with breaks and he was terminated on 31-10-96 without any notice. Copies of yearwise break up appointment of the petitioner is hereby filed. The management used to maintain the panel of candidates to be appointed on temporary posts and the petitioner was also a member in that panel. Several juniors are appointed ignoring the petitioner's seniority. The petitioner's post is a permanent in nature and he worked for a long period. A list of junior candidates whose services are absorbed is filed. The petitioner also gave his application seeking for permanent employment but it was not considered. The management issued a staff circular No. 91 dated 24-9-81 directing the temporary employees should not be engaged for more than 200 days in a calendar year. The management did not follow the rule provided under Sec. 25G of the I.D. Act, namely "last come first go". The retrenchment of the petitioner is only to accommodate another employee. The management was paying Rs. 90/- per day at the term of retrenchment. Hence this application.

(4) The second respondent filed its counter pleading that this application is not maintainable under Sec. 2A of the I.D. Act, as this is not a case of discharge or dismissal, retrenchment or termination of services. While it is a case of panel of candidates prepared as per the settlement entered into between the management and State Bank of India Staff Federation. The petitioner was engaged as a temporary Messenger and water boy in State Bank of India Yanam Branch, in a leave vacancy. As per the settlement mentioned above, the empanelled candidates were employed depending upon the vacancies till 31-3-97 and juniors who are left over from the empanelled list could not be accommodated for want of any regular vacancies. It is false to allege that another person was appointed in the place of workman to get over the administrative and legal difficulties. It is also false to allege that the workman was prevented from working for 200 days to avoid legal and administrative difficulties so that he would not reach the statutory period of 240 days which would give him a right to be regularised. The services of the workman could only be taken in leave vacancies on daily wage basis and the petitioner was not appointed to the post in accordance with the rules. Therefore, the concept of "retrenchment" cannot be extended to the petitioner. It is false to allege that the services of the petitioner were terminated from 31-10-1996. In fact, the management did not have the need to employ the workman from 31-3-97 onwards. It is further pleaded that on 17th November, 1987 an agreement was arrived at between the federation and the management bank under Sec. 2(p) read with Section 18(1) of the Industrial

Disputes Act, 1947 read with Rules 58 of Industrial Disputes (Central) Rules, 1957 and it is the 1st settlement. Second settlement is dated 16-7-88 between the same parties. As per the 1st settlement 3 categories A, B and C and they are as follows :

- (i) Categories 'A'. Those, who have completed 240 days temporary service in 12 months or less after 1-7-1975.
- (ii) Categories 'B'. Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975.
- (iii) Category 'C'. Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975. In this first settlement, it was agreed that the temporary employees as categorised above would be given chance for being considered for permanent appointment in the management bank's service against vacancies likely to arise during the period 1987 to 1991.

(5) As per the 2nd settlement which was agreed to substitute the period for being considered for permanent appointment in the bank against the vacancies likely to arise from 1987 to 1992 in the place of 1987 to 1991 as contemplated under 1st settlement dated 17-11-87. The 3rd settlement is entered into between the same parties on 27-10-88 as per the said settlement a clause 1-A after clause 1 in the first settlement is installed and it is as following :

"persons, who have been engaged in casual basis [as defined in clause 11(ii) hereunder] to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, water Boys, sweepers etc , for any of the periods mentioned in category 'A', 'B', and 'C' in Clause 1 will be given a chance for being considered for permanent appointment in the bank's service against vacancies likely to arise from 1988 to 1992 "

Therefore, the casual/daily wagers were also to be

temporary employees and casual/daily wagers separately in the vacancies likely to arise upto 1994 and 1995-96 respectively, which was also agreed to substitute the year 1992 with 1994 in the 1st settlement. In other words separate panels were prepared for temporary employees and casual/daily wagers for filling up of the vacancies arising between 1988 to 1994 in respect of temporary employees and for filling up of the vacancies arising between the years 1995 to 1996 in respect of casual/daily wagers. There are 4 zones at Hyderabad, Vijayawada, Visakhapatnam and Tirupathi covering all the districts in Andhra Pradesh and the local head office of the respondent bank is situated at Hyderabad. With regard to the above said settlement the panels of the selected candidates as well as the casual/daily wagers were prepared nonewise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during the stipulated period i.e. 1-7-85 to 31-7-88. The Federation approached the Regional Labour Commissioner (Central), Hyderabad for implementation of the bipartite settlement in respect of absorption of temporary employees. Then Regional Labour Commissioner (Central) conducted conciliation proceeding on 9-6-95 and an agreement is arrived at between the Federation and the management bank wherein it was agreed that both the panels of temporary employees and daily wagers/casual labour will be kept alive up to March, 1997 and the vacancies will be filled from both the lists concurrently.

(7) In pursuance of the conciliation proceedings a settlement was again entered into between the same parties on 30-7-96 it is the 5th settlement whereunder it was agreed that both the panels of temporary employees and daily wagers cum casual employees will be kept alive upto 1997 filling the vacancies existing/arrived at as on 31-12-94 from the panels prepared in the year 1992 for both the temporary employees as well as daily wagers/casual employees and thereafter the said panels would lapse.

(8) Another memorandum of understanding was signed on 27-2-97 between the parties to identify the messengerial vacancies as on 31-12-94 has since been completed by Central Office and thereby 403 messengerial vacancies were sanctioned to this circle of the management and other vacancies also may be filled from 1989 panel for temporary employees after effecting conversion from full time non-messengerial staff in the usual manner. Therefore,

both the panels
of casual labours

by the above said
understanding were

filled with the eligible candidates in the panels. The petitioner herein has not put in more number of days than those persons who has been absorbed and the petitioner did not work continuously for so many years as alleged by him and he has put in less than 240 days in a continuous 12 months period from 1-7-75 to 31-7-88 and as such, he has no right to ask for absorption in the management bank. The case of the petitioner was considered in the settlements 1 to 5 referred above and his case have not come up for consideration. The settlement 1 to 5 are binding on him. The management did not violate any of the terms of the settlements.

(10) It is further pleaded that as per the settlement dated 9-1-91 it is agreed between the parties that vacancies arisen upto December, 1994 will be filled from 1989 panel on the basis of seniority. Thereafter the said panels would lapse and the remaining or left over candidates are no claim whatsoever for being considered for permanent absorption in the bank.

(11) Coming to the panel of daily wagers enlisted in 1992 panel will be used for filling up the vacancies which may arise in the years 1995 and 1996 and after December, 1996 the said panel of the year 1992 also shall stand lapse and the remaining candidates in the panel will have no claim whatsoever for being considered for permanent absorption in the bank.

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(13) It is further pleaded that as per the settlement reached between the Staff Federation and the management the panel of temporary employees who worked upto 31-7-88 was prepared for giving a chance for being considered for appointment of permanent basis. But the same did not give a right to any of the empanelled candidates to have their services regularised on permanent basis.

(14) It is false to allege that the juniors to the workman are appointed ignoring the claim of the workman and his seniority and that the post in which he worked was permanent in nature. It is false to allege that the settlement entered into between the All India State Bank of India Staff

Federation and the Management is illegal and not binding on the workman. The workman appeared for the interview as per the settlement and if he is accepted he would have raised an objection before appearing for the interview. Having availed the opportunity as per the empanelment it is estopped from questioning the validity of the settlements. With regard to the list of candidates set out in the annexure to the claim statement it is submitted that all the 7 candidates were seniors to the workman and they worked for 241 days, 276 days, 179 days, 220 days, 179 days, 196 days and 200 days respectively. The circular dated 24-9-81 has no relevance as it is only to prevent indiscriminate continuation of temporary employees by the branches in the instances where their services were unwarranted. It is false to allege that there is violation of rules in making appointment to permanent basis. The petitioner is not entitled to any prior notice, before he was discontinued from service owing to lapse of panels prepared in compliance with the terms under the settlements 1 to 5. The workman is not entitled for reinstatement and there is no cause of action and the petition is liable to be rejected.

(15) The 1st respondent adopted the counter filed by the 2nd respondent.

(16) On behalf of the workman, the workman is examined as WW1 and got marked Exs. W1 to W6. On behalf of the management, the Chief Manager, Personnel, Hyderabad in the State Bank of India Office, Visakhapatnam is examined as MW1 and got marked Exs. M1 and M2.

(17) Heard both sides.

(18) The points that arise for consideration are :

- (1) Whether the petitioner was retrenched in violation of Sec. 25F of the I. D. Act?
- (2) Whether the petitioner is entitled for reinstatement with back wages as prayed for?

(19) The learned counsel appearing for the petitioner contends that the petitioner was initially appointed as a Messenger and Waterboy in the State Bank of India, Yanam branch in the month of Nov, 1985 in a permanent vacancy and he was continued in service at various places till his services were finally terminated at State Bank of India Main Branch, Kakinada without any notice from 30-10-96. It is further contended that the management deprived him to serve for 240 days in a particular year in order to disentitle him to claim a regular appointment because of two circulars issued by the management Exs. W5 and W6.

(20) On the other hand, the counsel appearing for the management contends that the petitioner never worked for more than 240 days in any calendar year much less 12

months preceding to 31-10-96, the alleged date of termination. It is also the further contention that by virtue of the 5 settlements dated 17-11-87, 16-7-88, 17-10-88, 9-1-91 and 30-10-96 entered into between the State Bank of India Federation and the management and the Memorandum of understanding dated 27-2-97, the panels of daily wagers enlisted upto 1992 panel will be considered filling up the vacancies which may arise in 1995 and upto December, 1996 and thereafter the said panel lapsed and the petitioner is not a senior. It is also further contended that the workman also appeared for interview in view of the said settlements and could not be selected for want of vacancies and the seniors were given priority. Therefore, it is not a case of retrenchment and that the workman has not worked for more than 240 days and as such he cannot swim into the harbour of Sec. 25F of the I.D. Act.

(21) I will deal with the first contention raised by the counsel for workman i.e. that the workman was not allowed to serve for more than 240 days in a year in view of the circulars Exs. W5 and W6 issued by the General Manager (Operations), State Bank of India, Hyderabad. Ex. W5 is a circular dated 16th November, 1997, Ex. W6 is the circular dated 16th November, 1979 whereunder the following facilities are extended to the temporary employees who completed 270 days during the period from 1st July, 1972 to 30th June, 1975 or a little later in the matter of absorption and the following facilities are extended to them :

- (i) The temporary employees, who have worked in subordinate cadre for 270 days or more during 1-7-72 to 30-6-75 or a little later, be absorbed in the existing regular vacancies in subordinate cadre, if any, subject to their being otherwise eligible and found suitable in an interview. This would, however, be subject to the constraints of reservation of vacancies for SC/ST candidates and after protected temporary employees viz., those who have put in 240 days temporary service in calendar months, have been absorbed.
- (ii) They will be allowed relaxation in age and as educational qualification on the same lines as has been allowed to the protected temporary employees.

(22) It is further instructed in Ex. W6 that:

- (a) No temporary employee should be allowed, under any circumstances, to cross 90 days temporary service in a year.
- (b) Those, who have completed 270 days temporary service as above and have been re-engaged against regular temporary vacancies

in terms of our extant instructions should not be allowed to exceed 240 days in 12 calendar months without prior reference to us.

- (c) Under the circumstances, candidates, who did not meet the required stipulations in regard to age/educational qualifications, should be offered temporary/permanent appointment.

(23) Ex. W5 is another circular dated 24th Sept., 1981 whereunder it is instructed that the temporary employees who have completed 270 days aggregate service or more during the period from 1-7-1972 to 30-6-1975 or a little later should not be engaged in temporary vacancies for a period in excess of 230 days (stipulated earlier) continuously or in any given period of 12 continuous calendar months.

(24) The learned counsel appearing for the workman contends that because of the above said two circulars, the workman was not allowed to work more than 240 days in a calendar year. Therefore, the workman could not work for more than 240 days so as to seek the shelter under Sec. 25-B or Sec. 25F of the I. D. Act. The learned counsel appearing for the workman also further contends that Sec. 25B clause (1) where a workman was not allowed to work, due to no fault on his part, he shall be deemed to be in continuous service and in support of his contention he placed reliance on a decision of the Apex Court reported in AIR 1966 SC 75 between Employers in relation to the Digwadh Colliery Vs. Their workman, wherein their Lordships were pleased to give the meaning of the expression 'continuous service' for not less than one year under Sec. 25F read with Sec. 25-B of the I. D. Act and it is as follows :

“Though S. 25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during the period of 12 calendar months both the conditions are fulfilled.....No interrupted service is necessary if the total service is 240 days in a period of 12 calendar months either before these several changes or after these.”

Their lordships observed that the service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted. To appreciate the above said decision and the contention raised by the counsel for workman it is essential to extract Sec. 25B(1).

“25-B(1) : a workman shall be said to be in continuous service, for a period if he is, for that period, in un-interrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which

is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman.”

(25) The learned counsel for workman contends that even if there was any interruption in the service of the workman on account of a cessation of work which is not due to any fault on the part of the workman shall be deemed to be “continuous service” under an employer. Sec. 25-B(2) reads as follows :

“Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.”

(26) In the above said decision, their Lordships have considered the service of the workman worked for more than 240 days in each calendar year though with some interruptions.

(27) Therefore, the learned counsel appearing for the management submits that the above said decision has no application for the reason that the workman in this case have not worked 240 days in 2 calendar months preceding to the alleged retrenchment either with interruptions or otherwise.

(28) As already observed above, the meaning of continuous service was given in the above said judgment. The total working days were 240 days in the above said judgement with some interruptions. Therefore, their

Lordships observed that even there were some interruptions, the total period worked in a year shall be taken into consideration to treat it as ‘continuous service’ irrespective of the interruptions or any break of service.

(29) Even applying the above said decision to this case, the workman did not complete 240 days service continuously within a period of 12 months and the workman as WW1 admitted that he did not work for 240 days in a calendar year because of the periodical termination made by the respondent.

(30) The learned counsel appearing for the management contends that the workman was employed on casual need basis to work in leave vacancies. Hence the question of their termination periodically or otherwise does not arise. Anyway, that aspect will be dealt separately at a later stage.

(31) The learned counsel appearing for the workman submits that because he is not provided with any work he could not be able to complete 240 days continuous service and it is not his fault and he shall be deemed that he had worked for more than 240 days in a year and he also further contends that because of the circular issued by the management under Exs. W5 and W6 the workman was not allowed to work for more than 240 days in a year. This contention has no force because the workman joined in the service in the year 1985 and he is only a casual employee. The circulars Exs. W5 and W6 were issued in the years 1979 and 1981 and they were issued much earlier than the date of joining of the workman in the service. Therefore, it cannot be said that those circulars were motivated to deprive the workman from claiming their legitimate rights and that the management indulged in methods amounting to unfair labour practice.

(32) It is further contended by the workman that the management in this case is placing reliance on 5 settlements entered into between the Staff Federation and the management (as contained in Ex. M2) and accordingly, the panels of daily wagers were enlisted upto 1992 and the names of the seniors were considered upto 31-3-97. The petitioner and others could not get selection. The counsel appearing for the workman submits that the said settlements do not bind the petitioner as he is only a daily wager. Here the workman in his evidence admitted that he was also interviewed and his name was also included in the panel list. He also admitted that Staff Association and the management entered into agreements for regularisation of the temporary employees and certain guidelines were given and that the employees of the list for regular appointment was prepared basing on the agreement entered into between the Staff Association and the management.

Therefore, it cannot be said that the said settlements entered between the Staff Association and the management are not binding on the workman. Whatever it may be, those settlements are only with regard to the regularisation of the temporary/casual employees. The point before me is not with regard to the regularisation of the services of the petitioner and others. The case of the workmen is that the termination of the petitioner, as alleged by him, is illegal.

(33) The learned counsel appearing for the workman contends that in the place of the petitioner some contract labour is engaged and that the workman is perennial in nature and as such, the services of the petitioner cannot be terminated. It is also further contended that the management in order to employ labour under the Contract Labour (Abolition and Regulation) Act must obtain licence under Sec. 7 of the Act and no such licence is forthcoming.

(34) This contention has no force because it is not the case of the management that in the petitioner's place somebody else is employed on contract basis. Therefore, the doctrine of lifting the veil to do justice between the parties as was held in the Secretary, Haryana State Electricity Board Vs. Suresh and others etc. reported in AIR 1999 Supreme Court 1160 have no application. Here the simple case of the workman is that he did not serve for more than 240 days in an year preceding to 31-10-96 and his services were retrenched without following the procedure contemplated under Sec. 25F of the I.D. Act.

(35) On the other hand, the case of the management is that the workman is only a casual labour used to be engaged in the leave vacancies upto 31-3-97 and thereafter they are not taking anyone on temporary basis in the leave vacancies. The management placed Ex. M1 statement showing the number of days the petitioner worked during the relevant period. His services are disengaged as there is no continuous availability of leave vacancies for engaging the services of the petitioner. Therefore, as rightly contended by the learned counsel appearing for the management, that this is a case where the petitioner is only a daily wage employee, worked in different branches, with breaks and there are no particulars of malafide breaks attributable to the management. The workman in this case is not in continuous service of 240 days as required under Sec. 25F and 25B of the ID Act. Hence the petitioner cannot ask for reinstatement.

(36) In support of his contention in the management's counsel placed reliance on a Division Bench of Rajasthan High Court reported in 1994 LAB I.C. 1370 between Pali Central Co-operative Bank Ltd., Pali Vs. Sunil Kumar Sharma

wherein their Lordships of the Rajasthan High Court were pleased to held under Sec. 25F for the I.D. Act that :

“the termination of the services of the daily wages employees—Not in continuous service for 240 days—His verbal termination of services—does not violate Sec. 25F.”

Therefore, the above said decision squarely applies to the case on hand.

(37) Thus, in the light of my aforesaid discussion, the petitioner failed to establish that his case would fall under Sec. 25F of the I. D. Act. Therefore, I see no merits in the application.

(38) In the result, the petition is dismissed and nil award is passed. However, there is no order as to costs and each party is directed to bear its own costs.

Dictated to steno transcribed by her given under my hand and seal of the court this the 8th day of August, 2001.

K. VEERAPU NAIDU, Presiding Officer

APPENDIX OF EVIDENCE

ITID (C) 29/2000

WITNESSES EXAMINED

FOR WORKMAN : WW1: K. SANJEEVA RAO

FORMANAGEMENT : MW1: C. R. M. SASTRY

DOCUMENTS MARKED

FOR WORKMAN:

Ex. W1 : 13-6-92 : Service certificate

Ex. W2 : 8-4-96 : Appointment order

Ex. W3 : 25-7-98 : Service certificate

Ex. W4 : 6-4-1992 : Panel List

Ex. W5 : 24-9-81 : Staff Circular No. 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad.

Ex. W6 : 16-11-79 : Staff circular No. 91 issued by General Manager (Operations) SBI Personnel Dept., Hyderabad.

FOR MANAGEMENT:

Ex. M1 : List of Ex. temporary employees who raised dispute before Industrial Tribunal-cum-Labour Court Visakhapatnam.

Ex. M2 : Settlement and Judgments regarding regularisation of service of the temporary employees and casual employees.

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3074.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सबद्ध निोजकों और उनमें के कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2001 को प्राप्त हुआ था।

[सं. एल-12012/17/94-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3074.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 18-10-2001.

[No. L-12012/17/94-IR(B-D)]
AJYAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI J. P. SHARMA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. ID 39/95

Reference No. L-12012/17/94-IR(D. D)

Dated 16/17-5-1995

Ravinder Kumar Sharma,
C/o The General Secretary,
S.B.I. Staff Congress,
1303 Sector-22-B,
Chandigarh.

... Applicant/workman

Versus

The Assistant General Manager,
State Bank of India,
Zonal Office,
Sector-17,
Chandigarh.

.... Respondent

APPEARANCES:

For the workman : Shri O. P. Batra, Advocate.

For the management : Shri V. K. Sharma.

AWARD

(Passed on 7th of September, 2001)

The Central Government vide order No. L-12012/17/95-IR (D. D.) dated 16/17th of May, 1995 has referred the following dispute under clause (d) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act 1947) to this Tribunal for adjudication:—

“Whether the action of the management of SBI in terminating the service of Shri Ravinder Kumar Sharma, violating the provisions of Section 25-M of the I.D. Act 1947 godown keeper w.e.f. 11-3-78 is legal and justified? If not, to what relief the workman is entitled?”

2. The applicant filed statement of claim stating that he was appointed as godown keeper with the respondent w.e.f. 8-11-1977 at Ferozepur branch. His services were terminated on 11-8-1978 and after termination of service of the applicant new appointments have also been made without offering any opportunity of employment to him in violation of Section 25-M

of the Act 1947. It was prayed that his termination order may be set aside and the respondent may be directed to reinstate him w.e.f. 12-3-1978 with full back wages and continuity of service.

3. The non-applicant in the reply has raised preliminary objection that the claim has been filed after a period of 19 years and thus can not be entertained. On merits it was stated that the applicant was appointed as temporary godown keeper for particular period against temporary and seasonal vacancy. He had not completed 240 days service in 12 calendar months. His services were discontinued when no longer required. He worked only for a period of 122 days.

4. In support of the claim, the applicant has filed his own affidavit. The representative of the non-applicant was given opportunity to cross-examine the applicant on his affidavit. On behalf of the respondent the affidavit of S. R. Vaid was filed. Learned counsel for the applicant was given opportunity to cross-examine the witness on his affidavit.

5. Heard arguments of the learned advocate on behalf of the applicant and learned representative of the respondent and pursued the record.

6. It is not in dispute that the dispute has been raised on behalf of the applicant after about 16 years. But merely because of delay in raising the dispute the claim can not be disallowed. It may however be considered that on account of delay what reasonable relief can be granted to the applicant.

7. It is not in dispute that the applicant had served the respondent for the period of 122 days prior to the alleged date of termination of his services. It has been admitted by the respondent that the services of the applicant were dispensed with as the same were no longer required. The services of the applicant were therefore, terminated by the respondent which amounts to retrenchment.

8. It has been admitted on behalf of the respondent in reply to the application dated 18-12-2000 filed on behalf of the applicant that the following persons were engaged by the respondent as godown keeper in the following branches of the bank.

Name	Period	Branch
1. Sunil Kumar	25-2-80- to 24-5-80	Jalalabad
2. Davinder Goel	12-4-84 to 9-7-84	Jalalabad
3. Kulwinder Singh	15-11-83 to 11-2-84	Guru Marsahai
4. Tota Ram	3-11-83 to 31-1-84	Fazilka

It is therefore, evident that after termination of the services of the applicant appointments were given to the persons mentioned above. It is also not disputed that before giving appointment to the persons mentioned above, no opportunity of employment was offered to the applicant. The respondent thus has violated the provisions of Section 25-M of the Act 1947.

9. It has been held in case reported in R.L.R. 1991 (2) page 65 Surya Parkash Sharma Vs. Rajasthan Text Book Board Jaipur and others that the petitioner can claim wages by way of compensation of the period during which his juniors remained in employment either by way of retention against the provisions of Section 25-G of the Act 1947 or on account of re-employment.

10. In view of the above authority the action of the respondent in not offering opportunity of employment to the applicant as per the requirements of Section 25-M of the Act 1947 is held illegal and unjustified and the applicant will be entitled to the salary for the period at the same rate Sunil Kumar, Kulwinder Singh and Davinder Goel received as temporary godown keeper from the bank.

J. P. SHARMA, Presiding Officer

Chandigarh,

7-9-2001

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3075.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जलपुर के विवाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2001 को प्राप्त हुआ था।

[सं. ए-12012/80/94 आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 18-10-2001.

[No. L-12012/80/94-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JABALPUR
CASE NO. CGIT/LC/R/142/96

PRESENT :

Presiding Officer : Shri K. M. Rai.
Shri Atmaram Sahu
through G. P. Memorial Centre,
Kirandul,
Distt. Bastar.

Applicant

Versus

The Assistant General Manager,
State Bank of India,
Dharwadpura Road, Jagdalpur,
Distt. Bastar (MP)

Non-applicant

AWARD

Passed on this 3rd day of October, 2001

1. The Government of India, Ministry of Labour vide order No. L-12012/80/94-IR(B-II) dated 16-6-96 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management of SBI in terminating the services of Shri Atmaram Sahu is legal and justified? If not, what relief the concerned workman is entitled to?”

2. The workman remained absent inspite of service of notice on him. He does not appear to be interested in pursuing his claim. Hence, proceeded ex-parte against him.

3. In view of the aforesaid facts, it is held that no dispute exists between the parties in this case. The workman is not entitled to any relief as claimed by him.

4. The reference is accordingly answered. Copy of the award be sent to the Govt. of India, Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3076.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के विवाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2001 को प्राप्त हुआ था।

[सं. एल-12012/107/91- आई आर (बी-1)]

अजय कुमार डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3076.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 18-10-2001.

[No. L-12012/107/91-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI J. P. SHARMA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 108/91

Reference No. : L-12012/107/91-IR(B-I) dated 16-8-1991

Sukhdev Singh,
deceased through his Lrs.
Gurmali Kaur (Widow)
Devinder Singh and Parminder Singh (Sons)
and Jashir Kaur (daughter)

Applicant/workman

Versus

State Bank of India,
through Regional Manager-I,
Zonal Office Punjab, Sector-17,
Chandigarh.

Respondent.

APPEARANCES :

For the Workman : Shri J. C. Verma.
For the Management : Shri P.K. Gupta.

AWARD

(Passed on 7th of September, 2001)

The Central Government, vide order No. L-12012/107/91-IR. (B.I) dated 16th of August, 1991, has referred the following dispute under clause (d) of Sub Section (1) of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the Act 1947) to this Tribunal for adjudication :

“Whether the action of the management of State Bank of India in relation to their Mohali Branch in denying and lowering the seniority of Shri Sukhdev Singh, Clerk/Cashier is just and fair? If not, to what relief the workman concerned is entitled to?”

2. The applicant Sukhdev Singh (who after filling of claim has expired and his Lrs. have been taken on record) claimed in his claim statement that he was working as clerk-cum-cashier at Kurukshetra University branch and was confirmed in the service of the bank w.e.f. 2-3-1978. He was transferred to Industrial Area Chandigarh branch in April 1978 from where he was transferred to Mohali Branch in the year 1980. He did not avail extra ordinary leave upto the year 1980. For the reasons beyond his control he had to go on leave from time to time

w.e.f. 1981 as his wife had joined M.D. courses at Patiala. The applicant was denied the benefit of increments out of service rendered by him in the year 1981 when he was first sanctioned the extra ordinary leave for some period. The applicant rendered 8500 days service in the bank but he was given only three increments. Even if the applicant was on leave without pay, he was entitled to the benefit of casual leave which was denied by the respondent for four years deducting his salary for 48 days during the period 1981 to 1984. He was sanctioned sick leave for 80 days in each year of service on half average pay without his request. In this manner the respondent put the applicant to a loss of 15 days every year for the purposes of sanctioning the increments and he was also lowered in seniority. It was prayed that the applicant may be awarded the benefit of service alongwith increments earned in the grades as well as appointment of teller with retrospective effect. The respondent may also be directed to pay the arrears of wages accrued out of the increments and seniority with interest and with cost.

3. The respondent admitted that the applicant was appointed as Clerk-cum-Cashier in the Bank and was confirmed in the bank's service w.e.f. 2-3-1978. It was stated that the applicant remained absent from duty unauthorisedly for 2019 days from the year 1979 to 1992 as per the details is given below :—

Year	Period of absence
1979	131 days
1980	112 days
1981	222 days
1982	353 days
1983	249 days
1984	278 days
1985	58 days
1986	110 days
1988	56 days
1989	51 days
1990	123 days
1991	162 days
1992	114 days
Total	2019 days

4. It was stated that the applicant did not submit leave applications. It was stated that increments of the applicant were not stopped rather the applicant had not earned any increment due to his long absence from duty. It was stated that denying the benefit of increments and lowering the seniority of the applicant was justified as per para 380 of the reference book on staff Matters—Volume 1 which reads as under :—

"No pay and allowances are payable to an employee during the period of extra-ordinary leave and such period of extraordinary leave cannot be counted for the purpose of seniority/length of service to the extent it has the effect of shifting the date of increment of the concerned employee provided that in case where the sanctioning authority is satisfied that the leave taken on account of illness or for any other cause beyond the employees' control, it may treat that the period of extraordinary leave may count for increment.

It was stated that the applicant was not entitled to any relief.

5. On behalf of the applicant no evidence was produced. On behalf of the respondent the affidavit of G.D. Gupta Chief Manager of the bank was filed. Learned counsel for the applicant was given opportunity for cross-examination.

6. Heard arguments of the counsel for the applicant and the representative of the respondent.

7. Learned counsel for the applicant has restricted his arguments to the prayer for the grant of increments. He has not challenged about denying and lowering the seniority of the applicant. It was however be stated that the seniority of the applicant was never determined as stated by G. D. Gupta. The question therefore, lowering the seniority does not arise. As the applicant has expired, the question of seniority has

no significance. As regards the non-granting of increments it may be stated that about the non-granting of the increments, there is no mention in the order of reference and the jurisdiction of this Tribunal is limited to the points referred in the order of reference. As per the reference the dispute about the seniority is to be adjudicated only. Even if non-granting of the increments is taken to be ancillary relief to the dispute mentioned in the reference, the applicant is not entitled for the same as he remained absent unauthorisedly. There is no evidence on record that the applicant had applied for leave for his absence. As per para 380 of reference book on staff matters, even extraordinary leave for more than 360 days in the entire period of employees service cannot be counted, for the purpose of seniority and length of service and for the purpose of counting the increments. The applicant has remained absent from duty for 2019 days during the period from 1979 to 1992, he cannot claim the relief of increments.

8. On the basis of above discussion the action of the management in denying and lowering the seniority of the applicant (since deceased) is just and fair which has not been challenged on behalf of the applicant and there being no dispute about the same the applicant is not entitled to any relief. The copy of the award be sent to the Central Govt. U/S 17(1) of the Act 1947 for publication.

Chandigarh.

7-9-2001.

J. P. SHARMA, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3077.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विषमता सिरोही क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबंध निोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम एवं अधिनियम जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-10-2001 को प्राप्त हुआ था।

[सं. एन-12012/163/93-प्र.ई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3077.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chhindwara Seoni Kshetriya Gramin Bank and their workman, which was received by the Central Government on 18-10-2001.

[No. L-12012/163/93-IR(B-1)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT JABALPUR
CASE NO. CGIT/LC/R/182/95

Presiding Officer : Shri K. M. Rai.

Shri Jhabbulal Surya,
S/o Shri Anthram Surya
Ex Supervisor,

Teh and Dist. Chhindwara

Applicant

Versus

The Chairman,
Chhindwara Seoni Kshetriya Gramin Bank,
Chhindwara .. Non-applicant.

AWARD

Passed on this 1st day of October, 2001

1. The Government of India, Ministry of Labour vide order No. L-12012/163/93-IR B-I dated 16-10-1995 has referred the following dispute for adjudication by this Tribunal :—

“Whether the action of the management of Chhindwara Seoni Kshetriya Gramin Bank Chhindwara in terminating the services of Shri Jhabbulal Surya S/o Shri Anihram Surya field supervisor with effect from 28-4-86 during the extended period of probation is proper and justified? If not, to what relief Shri Jhabbulal Surya is entitled?”

2. The case for the workman is that he was appointed as field supervisor on 3-2-84 in the pay scale of Rs. 740-15-800-20-900-25-1000-30-1180 subject to the conditions of undergoing training for a period of one month. During the training period, he was getting Rs. 300 per month. The copy of appointment order is B-I. He completed his period of probation of two years on 13-2-1986.

3. It is further alleged by the workman that after training he was posted at Malara branch of the Bank in Seoni District vide order dated 24-3-1984 Annexure B-II. Subsequently he was attached to the District Manager's office at Seoni vide order dated 10-5-1984. Thereafter he was transferred to Seoni Branch of the Bank vide order dated 12-7-1984 (Annexure B-3). While working as field supervisor at Seoni Branch of the Bank, one Shri Bhupendra Singh Chouhan a contractor of MP Rajya Parshudhan and Kukkut Vikas Nigam wanted some favour from him in taking loan by adopting illegal means. The applicant never agreed to his wishes and therefore it caused annoyance to him. Shri Chouhan decided to implicate him in a false criminal case. He therefore organised a trap against him and got him implicated in criminal case by Lokayukt Police. The challan was filed against him before the special Judge Seoni under the provision of Prevention of Corruption Act, 1947. After the regular trial of the case, he was acquitted of all the charges on 8-4-92. After the decision of the criminal case, he approached the Bank authorities to give him regular employment but to no effect.

4. The workman has further alleged that after the filing of the challan before the special judge, Seoni, he was dismissed from service by the Bank vide order dated 28-4-86. His services were terminated on account of the said criminal case filed against him. In the order of termination no reasons were given. Before terminating his services, neither any domestic enquiry was conducted nor one month statutory notice was served on him by the management. No retrenchment compensation under Sec. 25-F of the I.D. Act was paid to him by the management. In view of these facts, the order of termination passed by the management is void and deserves to be set aside. The contention of the management that his services were terminated during the course of probation is baseless and misleading. He is entitled to reinstatement with all back wages and other monetary benefits.

5. The case for the management is that the applicant Jhabbulal Surya does not fall within the purview of workman and as such this Tribunal has no jurisdiction to decide the present dispute. The workman was appointed as a field supervisor and was performing managerial functions. His services were governed by the Chhindwara Seoni Kshetriya Gramin Bank (Staff) Services Regulations 1983. The workman was an officer according to sub-Regulation-2 and Regulation-3 and therefore the provisions of I.D. Act 1947 do not apply to him. During the period of probation the performance of the workman was not found satisfactory and therefore his services were terminated on 28-4-86. On several occasions his lapses were pointed out to him but he never tried to improve his working.

6. The management further alleges that the termination of the workman is a termination simpliciter and therefore it cannot be questioned. This termination is not penal in the nature and therefore the question of serving a chargesheet or giving him any notice does not arise. The management was not required to pay retrenchment compensation under Sec. 25-F of the I.D. Act 1947. On the basis of acquittal in a criminal case the workman is not entitled to reinstatement with back wages as claimed by him. His services were

terminated during the period of probation on account of his unsatisfactory performance. In view of all these facts the workman is not entitled to any relief as claimed by him.

7. The following issues arise for decision in this case and my findings thereon are noted hereinafter :—

“Whether Jhabbulal Surya is a workman? Whether the reference is maintainable? Whether the order of dismissal from service of the workman is illegal?”

4. Whether the workman is entitled to reinstatement with all back wages.

5. Relief and costs?

8. Issue No. 1 :

The workman has been defined in Sec. 2(s) as under :—

“Workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be express or implied and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute, does not include any such person :—

(i) who is subject to the Air Force Act 1950 or the Army Act, 1950 or the Navy Act, 1957,

(ii) who is employed in the police service or as an officer or other employee of a person, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercise either by the nature of the duties attached to the office of by reason of the powers vested in him functions mainly of a managerial nature.”

9. The workman was appointed as field supervisor in the pay scale of Rs. 740—1180 vide order dated 3-2-84. His salary was less than Rs. 1600 per month. Simply by designating as a supervisory officer will not exclude him from the category of workman. After joining the service, the workman was directed by the bank to meet the agriculturist in the remote villages and motivate them to take loan from the Bank for agricultural purposes and also to convince them to repay the agricultural loan advanced to them. He was neither empowered by the bank to sanction the loan or disburse the loan amount. There was none working under him. He had no power to sanction leave to the employees of the Bank. He had also no power to take any disciplinary action against any employee of the Bank. He was directly working under the Branch Officer of the Bank. In view of all these facts it becomes amply clear that by merely designating him as field supervisor on salary of less than Rs. 1600 per month will not exclude him from the definition of “workman”. It is therefore held that Jhabbulal Surya is a workman according to the provisions of Sec. 2(s) of the I.D. Act, 1947. Issue No. 1 is answered accordingly.

10. Issue No. 2 : In view of my finding given on Issue No. 1. It is held that this dispute is maintainable before this Tribunal as the applicant Jhabbulal is a workman and his order of dismissal from service amounts to an industrial dispute as per the provisions of I.D. Act 1947. The management has not been able to assign any legal reason to substantiate that this Tribunal has no jurisdiction to entertain the present dispute. I therefore hold that this dispute is maintainable before this Tribunal. Issue No. 2 is answered accordingly.

11. Issue No. 3: Admittedly the workman was appointed as field supervisor on 3-2-84 and joined his duty on 13-2-84. His probation period was 2 years. His services were terminated w.e.f. 28-4-86 vide order Annexure M(A3). It means the services of the workman were terminated after the expiry of the 2 years probation period. No reason has been assigned in the termination order Annexure M(A 3). He had continuously worked for more than 240 days in a calendar year preceding the date of his termination from service. Before

terminating his services neither any notice was given to him nor any enquiry regarding any misconduct was conducted against him. He was also not paid any retrenchment compensation according to the provisions of Sec. 25-F of the I.D. Act 1947 before terminating his service. In this way the management has not complied with the provisions of I.D. Act, 1947 before terminating services of the workman. The violation of the provisions of I.D. Act shall necessarily held the order of dismissal as void.

Admittedly the challan under the provisions of Prevention of Corruption Act 1947 was filed by the Lokayukt Karyalaya in the court of special judge at Seoni. After the trial the workman was acquitted of the charges. The court specifically held that the workman was falsely implicated in the said criminal case and ordered the prosecution of Shri Ashok Khare and Shri Chouhan. In this connection, it has been clearly stated by the workman that Shri Upendra Singh Chouhan wanted to take loan from the Bank by adopting unfair means for which he had never agreed and therefore he conspired a false case with Ashok Khare against him. This version of the workman has been fully established by the judgement given by the special Judge Seoni on 8-4-92. The criminal case was pending before the special Judge, Seoni since 1985 and during the trial of the case his services were terminated. After his acquittal of the charges by the special judge, Seoni the workman cannot be held to be engaged in some unfair means which was unbecoming of the public servant. On the basis of this trial for criminal charge his services cannot be terminated as he has been honourably acquitted of the charges by the competent court. The State has not preferred any appeal against this judgement and therefore the order of special judge, Seoni has become final. In view of this fact, the workman could not be held guilty of any misconduct what so ever might be.

13. In view of the foregoing reasons it becomes amply clear that the workman was terminated after completing his two years of probation. It has not been stated by the management in the order of termination that his performance was found unsatisfactory during the period of probation and therefore his services were dispensed with. Neither any domestic enquiry for any misconduct was conducted against him nor one month's statutory notice was given to him prior to the termination of his services. His termination amounts to retrenchment. As he has completed continuous service for more than 240 days in a calendar year preceding the date of his termination, the management has violated the provisions of Sec. 25-F of the I.D. Act 1947 by not paying retrenchment compensation to the workman. Taking all these facts into consideration, it is held that the order of dismissal passed by the management is void and deserves to be quashed. Issue No. 3 is answered accordingly.

14. Issue No. 4 : In view of my finding given on issue No. 3 it is held that the workman is entitled to reinstatement with back wages. This issue is answered accordingly.

15. Issue No. 5 : On the reasons stated above, it is held that the order of termination passed by the management against the workman on 28-4-86 is illegal and therefore it is quashed. The workman shall be reinstated with all back wages and other monetary benefits within a period of 4 months from the date of award. His absence from duty shall be treated as continuous service for the purposes of all service benefits. He shall be deemed to be on duty from the date of termination till the date of reinstatement. Parties shall bear their own cost.

16. Copy of the award be sent to the Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3078.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंध के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय

चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/10/2001 को प्राप्त हुआ था।

[सं. एल 12012/273/95-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3078.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal cum Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of State Bank of Patiala and their workman, which was received by the Central Government on 18-10-2001.

[No. L-12012/273/95-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI J. P. SHARMA, PRESIDING OFFICER,
CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 117/97

Reference No. L-12012/273/95-IR(B-I)

Dated 25th of April, 1997

Shri Ram Dass,
S/o Shri Bachna Ram,
Vill. Katta,
Teh. Anandpur Sahib,
District Ropar,
(Punjab).

.... Claimant/applicant

Versus

1. The State Bank of Patiala at Patiala, through its General Manager.
2. The State Bank of Patiala, Naurpur Bedi Branch, through its Manager/Competent Authority.

.... Respondents

APPEARANCES :

For the workman : Shri Sanjay K. Cuevera, Advocate.

For the management : Shri N. K. Zakhmi, Advocate.

AWARD

(Passed on 6th of September, 2001)

The Central Government vide order No. L-12012/273/95-IR(B.I) dated 25th of April, 1997, has referred the following dispute under clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the Act 1947) to this Tribunal for adjudication :

"Whether the action of the management of State Bank of Patiala represented through its General Manager in not giving in opportunity to be considered for appointment as sub-staff to Shri Ram Dass son of Shri Baclna Ram as per circular No. PER/15 dated 2-7-93 is just and legal? If not, to what relief the workman is entitled to and from which date?"

2. The applicant filed statement of claim stating that he was appointed as watchman-cum-peon in Noorpur Bedi in State Bank of Patiala (hereinafter referred to as the Bank). The respondent No. 1 have the overall control on respondent No. 2. The applicant is a 'workman' as defined U/s 2(a) of the Act 1947 and the bank is 'industry' as defined in Section 2(j) of the Act 1947. The applicant had worked for 85 days during the period from 1-11-1983 to 24-1-1984 and for 116 days from 13-10-1986 to 5-2-1987. The services of the applicant were retrenched with the assurance that when ever there will be vacancy, he will be given priority over the others. It was submitted that the respondents framed a policy for absorbing ex-temporary employees of the bank vide circular dated

2-7-1993 according to which, a person who has completed more than 90 days service in the bank were entitled for absorption in the bank. All such persons were called to submit the applications. The applicant also filed application but the respondents ignored the claim of the applicant and he was not called for interview. On the contrary juniors to him were interviewed and absorbed. As per the circular the applicant fulfilled the criteria for permanent absorption. It was prayed that the respondents be directed to reinstate the applicant from the date junior to him were absorbed and to appoint on the post of peon-cum-watchman with full back wages and continuity of service and all other ancillary benefits.

3. On behalf of the respondents in the reply it was stated that the applicant was engaged as watchman-cum-peon on temporary and daily wage basis from 1-11-1983 to 24-1-1984 and he worked only for 85 days in Noorpur Bedi Branch of the bank. After a period of more than 2 years he was again engaged from 13-10-1986 to 5-2-1987 and he worked for 110 days with four breaks. It was admitted that as per circular dated 2-7-1993, the bank invited applications from those ex-temporary employees who had worked for 90 days and above in a calendar year after 1-1-1987. It was stated that the applicant was not eligible for absorption as he had worked for only 35 days after 1-1-1987.

4. The applicant filed rejoinder to the reply reiterating the facts mentioned in the claim petition.

5. In support of the claim, the applicant filed his affidavit. The learned counsel for the respondent was given opportunity to cross examine the applicant on his affidavit. In the form of documentary evidence copy of certificates marked W1 and W2 and copy of scheme marked Ex. W3 were filed. On behalf of the respondents, affidavit of Vinod Jain was filed. The learned counsel for the applicant did not seek the opportunity to cross-examine him.

6. Heard arguments on behalf of both the parties and perused the record.

7. It is admitted that the bank issued circular No. W3 for absorption of ex-temporary employees which reads as under :
"Circular No. PBR/15,

Dated 2-7-93

RECRUITMENT AND ABSORPTION OF EX-TEMPORARY EMPLOYEES

The attention of the Branch Manager/Department Heads at Head Office/Zonal Office is invited to our Circular No. PER/19 dated the 10th June, 1991.

2. In accordance with the Central Office guidelines we intend to offer one more one time opportunity to the eligible ex-temporary employees, who had put in minimum temporary service of 90 days or more in a calendar year after 1-1-1987, for permanent absorption in the Bank in the Subordinate Cadre through interview in full and final settlements of all the claims and disputes covered by the settlements and/or administrative exercise relating to their termination and other benefits under the provisions of Industrial Law, if any.

3. For this purpose we have called applications from the eligible ex-temporary employees through a 'Notice' published in the English and Hindi Editions of 'THE TRIBUNE' and Punjabi Newspaper 'AJIT'. A copy of the relative Notice is reproduced overleaf.

4. Please display this notice on the Branch Notice Board for the information of all concerned. The format of application as per Annexure-I of this circular should be handed over to the eligible candidates who visit your branch/office for the purpose."

Under the above scheme only such ex-temporary employees who had put in 90 days after 1-1-1987 were eligible for consideration for permanent absorption. The applicant admittedly had not put in 90 days service with the bank after 1-1-1987. The applicant in his statement has admitted that he had put in only 35 days service with the bank after 1-1-1987. The applicant was therefore, not eligible for consideration for permanent absorption. The learned counsel for the applicant has contended that the said circular is illegal. The tribunal is to adjudicate the dispute in terms of

reference. The validity or legality of the above said circular can not be considered. As per the circular, the applicant was not eligible for consideration for permanent absorption. The action of the management of the bank in not giving opportunity for appointment to the applicant as sub staff under the circular dated 2-7-1993 can not be said to be unjustified or illegal. The applicant is not entitled to any relief. The copies of the Award be sent to the Central Government U/s. 17(1) of the Act, 1947 for publication.

Chandigarh,
6-9-2001

J. P. SHARMA, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का. आ. 3079.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे, कोटा के प्रबंधन के संबंध निोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-10-2001 को प्राप्त हुआ था।

[सं. एल-41012/124/95-आई आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3079.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Kota as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway, Kota and their workman, which was received the Central Government on 18-10-2001.

[No. L-41012/124/95-IR(B-I)]

AJAY KUMAR, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान
पोस्टासीन अधिकारी श्री महेश चन्द्र भगवती, आर.एस
जे. एस.

निर्देश प्रकरण क्रमांक ओ. न्या./केन्द्रीय/22/96

दिनांक स्थापित 7/10/96

प्रसंग : भारत सरकार. श्रम मंत्रालय नई दिल्ली के आदेश
संख्या एल. 41012/124/95-आई आर. (बी)
दिनांक 1/10/96

निर्देश अन्तर्गत धारा 10(1)(घ)

औद्योगिक विवाद अधिनियम, 1947

मध्य

सीताराम आत्मज श्री रामपुल भोगा राममेन
निवासी पोस्ट पदामातहसील एवं जिला सवाईमाधोपुर।

—प्रार्थी श्रमिक

एवं

सहायक अभियंता, पश्चिम रेलवे सवाईमाधोपुर।

—प्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री आर. एस. शर्मा
 अप्रार्थी नियोजक की ओर से प्रतिनिधि :— श्री नरेश शर्मा
 अधिनिर्णय दिनांक 4-9-2001

: अधिनिर्णय :

भारत सरकार, श्रम मंत्रालय नई दिल्ली के उक्त आदेश दिनांक 1/10/96 के जरिये निम्न निवेदन/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदपरान्त 'अधिनियम' से सम्बोधित किया जावेगा) की धारा 10(1) (घ) के अन्तर्गत इस न्यायधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

"Whether the action of the Assistant Engineer, Western Railway, Kota Division, Swai-Madhupur in terminating the services of workman Shri Sita Ram S/o Shri Ram-phool Meena, Gangman w.e.f. 16-7-1991 is fair and just? If not, what relief the concerned workman is entitled to?"

2. निदेश/विवाद, न्यायाधिकरण से प्राप्त होने पर पंजी-बद्ध उपरान्त पक्षकारों को सूचना विधिवत रूप से जारी की गयी।

3. प्रार्थी सीताराम द्वारा प्रस्तुत स्टेटमेंट आफ क्लेम के अनुसार अप्रार्थी सहायक अधिनियन्ता पश्चिम रेलवे सवाईमाधोपुर जिसे संक्षेप में तदुपरान्त/अप्रार्थी नियोजक' से सम्बोधित किया जावेगा। ने उसे दिनांक 1-7-84 से गेगमैन के पद पर नियोजित किया था। उसने दि. 1-7-84 से 15-7-91 तक गेगमैन के पद पर लगातार एवं एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य किया है। यह अभिकथित किया गया है कि अप्रार्थी ने प्रार्थी को दिनांक 16-7-91 से बिना किसी पूर्व सूचना, नोटिस अथवा नोटिस वेतन का भुगतान किया अथवा बिना कोई प्रस्ताव दिये अवैध प्रकार से नौकरी से निकाल दिया है। अप्रार्थी ने प्रार्थी को सेवा से पृथक करने के पूर्व वरिष्ठता सूची का प्रकाशन भी नहीं किया है और उससे कनिष्ठ श्रमिकों को सेवा में बनाये रखकर स्थायी कर दिया है, अतः प्रार्थी पुनः बकाया वेतन एवं पिछले सेवा की निरन्तरता सहित सेवा पर बहाल होने का अधिकारी है।

4. अप्रार्थी नियोजक ने प्रार्थी द्वारा प्रस्तुत स्टेटमेंट आफ क्लेम में वर्णन तथ्यों का खंडन करते हुए यह कथन किया है कि उसने प्रार्थी के विरुद्ध विभागीय जांच के दौरान उसे अपना बचाव करने का पर्याप्त अवसर प्रदान किया है किन्तु प्रार्थी ने विभागीय जांच के दौरान बचाव में ऐसी कोई साक्ष्य प्रस्तुत नहीं की है जिससे उस पर लगाये गये आरोप गलत साबित हुए हो। अप्रार्थी ने प्रार्थी को अनुचित रूप से नौकरी से नहीं निकाला है, अपितु विभागीय जांच से दोषी पाये जाने पर ही नौकरी से पृथक किया है।

5. उल्लेखनीय है कि दोनों पक्षों द्वारा अपने-अपने अभ्यावेदन प्रस्तुत करने के उपरान्त दिनांक 14/12/98 को यह मामला घरेलू जांच की स्वच्छता के सम्बन्ध में बहस हेतु नियत किया गया था।

6. दोनों पक्षों को घरेलू जांच की स्वच्छता के सम्बन्ध में बहस सुनी गयी तथा अधिलेख पर ग्राह्य सारवान दस्तावेजात का ध्यानपूर्वक परिशीलन किया गया।

7. प्रार्थी सीताराम को आरोप-पत्र दिया गया था। अप्रार्थी द्वारा प्रार्थी को दिये गये आरोप-पत्र से सम्बन्धित अभिकथन के विवरणनुसार प्रार्थी सीताराम पुत्र श्री रामफूल मीणा आकास्मिक श्रमिक ने जाली सविस कार्ड बनाकर रेलवे में नौकरी प्राप्त की थी तथा जाली सविस कार्ड के माध्यम से रेलवे प्रशासन को धोखा दिया था जो कि प्रार्थी द्वारा किया गया गम्भीर कदाचार की परिभाषा में आता है अप्रार्थी नियोजक ने प्रार्थी के विरुद्ध लगाये गये इस आरोप के सम्बन्ध जांच अधिकारी नियुक्त कर जांच करवायी। जांच के दौरान जांच अधिकारी द्वारा प्रार्थी सीताराम का कथन लेख-बद्ध किया गया और उसे अपने में साक्ष्य प्रस्तुत करने हेतु पर्याप्त अवसर प्रदान किया गया। प्रार्थी सीताराम ने जांच के दौरान ऐसी कोई साक्ष्य प्रस्तुत नहीं की जिसके आधार पर कि यह निष्कर्ष निकाला जा सकता कि प्रार्थी के विरुद्ध लगाया गया आरोप मिथ्या है।

8. प्रार्थी के विद्वान प्रतिनिधि श्री आर.एस. शर्मा ने मेरे समक्ष यह दलील पेश की है कि अप्रार्थी नियोजक द्वारा प्रार्थी को ना तो आरोप-पत्र दिया गया और ना ही उसे अपने बचाव में साक्ष्य प्रस्तुत करने हेतु अवसर प्रदान किया गया। इस प्रकार अप्रार्थी द्वारा प्रार्थी के विरुद्ध जो जांच सम्पादित की गयी है, वह नैसर्गिक न्याय के सिद्धान्तों के सर्वथा प्रतिफल है जिसे स्वच्छ जांच नहीं कहा जा सकता। चूंकि प्रार्थी के विरुद्ध की गयी जांच अवैध, अनुचित एवं नैसर्गिक न्याय सिद्धान्तों के विपरीत है, अतः उस पर उसे सेवा से पृथक किये जाने का अधिरोपित दण्ड भी पूर्णरूपेण अवैध है।

9. अप्रार्थी के विद्वान प्रतिनिधि श्री नरेश शर्मा ने प्रार्थी के विद्वान प्रतिनिधि श्री आर.एस. शर्मा के तर्कों का खण्डन करते हुए युक्ति प्रकट की है कि उन्होंने न्यायाधिकरण के समक्ष जांच से सम्बन्धित सनस्त कागजातों को फोटोप्रतियां प्रस्तुत की है जिनसे ना केवल अभिसाधनों के विवरण का प्रति हो सम्मिलित है अपितु इसके अतिरिक्त जांच अधिकारी द्वारा प्रार्थी का लेखबद्ध किया गया कथन एवं जांच रिपोर्ट भी सम्मिलित है। प्रार्थी को स्वयं का बचाव करने का पर्याप्त से अधिक अवसर प्रदान किया गया है किन्तु प्रार्थी ने बचाव में कोई साक्ष्य प्रस्तुत नहीं की है। यह तथा जांच रिपोर्ट के अवलोकन मात्र से स्पष्ट है, अतः जांच पूर्णरूपेण स्वच्छ एवं नैसर्गिक न्याय सिद्धान्त के अनुरूप है और इन परिस्थितियों में प्रार्थी का स्टेटमेंट आफ क्लेम खारिज किये जाने योग्य है।

10. अप्रार्थी के विद्वान प्रतिनिधि श्री नरेश शर्मा का दूसरा तर्क यह है कि एक ओर तो प्रार्थी स्टेटमेंट आफ क्लेम में यह कहकर आया है कि उसे अप्रार्थी द्वारा बिना किसी पूर्व सूचना के बिना कोई नोटिस या नोटिस वेतन दिये या प्रस्तावित किये जा

वरिष्ठतासूची का प्रकाशन किये, अवैध प्रकार से नौकरी में निकाला गया है तथा दूसरी ओर उसके विद्वान प्रतिनिधि श्री आर. एस. शर्मा ने न्यायाधिकरण में यह दलील पेश की है कि अप्रार्थी द्वारा प्रार्थी को जो आरोप-पत्र दिया गया था, उसके सम्बन्ध में उसे बचाव करने का पर्याप्त अवसर नहीं प्रदान किया गया है। इस प्रकार प्रार्थी द्वारा स्टेटमेंट आफ क्लेम में वर्णित अभिवक्तों तथा उसके द्वारा बहस के दौरान प्रस्तुत की गयी दलीलों में गम्भीर विरोधाभास है। अर्थात् प्रार्थी द्वारा प्रस्तुत की गयी प्लेडिंग्स एवं उसके द्वारा की गयी बहस में समरूपता नहीं है। चूंकि प्लेडिंग्स एवं बहस में गम्भीर विरोधाभास है, अतः प्रार्थी का स्टेटमेंट आफ क्लेम स्वतः ही प्रभावशून्य होने के कारण निरस्तनीय है।

11. मैं अप्रार्थी के विद्वान प्रतिनिधि श्री नरेश शर्मा के इस तर्क से पूर्णतया सहमत हूँ कि प्रार्थी ने उसे जो अभिवक्त स्टेटमेंट आफ क्लेम के माध्यम से न्यायाधिकरण में प्रस्तुत किये हैं, वे सर्वथा भिन्न हैं तथा उसके विद्वान प्रतिनिधि श्री आर. एस. शर्मा द्वारा की गयी बहस उन अभिवक्तों के सर्वथा विपरीत है। प्रार्थी ने स्टेटमेंट आफ क्लेम में यह कथन दिया है कि अप्रार्थी नियोजक ने उसे सेवा से पृथक् किये जाने के समय अधिनियम की धारा 25-एफ, जी, एच के आज्ञापक प्रावधानों का उल्लंघन किया है तथा श्री आर. एस. शर्मा प्रार्थी प्रतिनिधि ने बहस के दौरान यही युक्ति प्रकट की है कि अप्रार्थी द्वारा की गयी जांच पूर्णरूपेण अवैध एवं नैसर्गिक न्याय सिद्धान्तों के विपरीत है, जबकि श्री शर्मा ने अप्रार्थी द्वारा उल्लेख किये गये आरोप-पत्र एवं उसके विरुद्ध की गयी जांच के सम्बन्ध में स्टेटमेंट आफ क्लेम में कोई उल्लेख नहीं किया है। इससे स्पष्ट है कि प्रार्थी सीताराम ने अप्रार्थी द्वारा उल्लेख किये गये आरोप-पत्र एवं उसके विरुद्ध की गयी जांच के तथ्यों को छिपाया है और उन्हें न्यायाधिकरण के समक्ष प्रकट नहीं किया है।

12. मैंने जांच पत्रावली का अवलोकन किया। जांच पत्रावली के अवलोकन से पाया जाता है कि अप्रार्थी द्वारा प्रार्थी को स्टेटमेंट आफ चार्जज अर्थात् स्टेटमेंट आफ एलोगेन दिया गया था। इसके उपरान्त जांच अधिकारी की निर्णयों को जो कि प्रार्थी के विरुद्ध जांच सन्निहित की गयी थी। जांच अधिकारी ने प्रार्थी के विरुद्ध जांच दिनांक 16-11-89, 28-11-89, 15-12-89, 28-12-89 एवं 15-1-90 के लिए जारी की थी। इन तारीखों में या तो प्रार्थी का बचाव नहीं हुआ और यदि बचाव सनाह-कार अनियत हुआ तो उसने कोई साक्ष्य प्रस्तुत नहीं की। वास्तव में प्रार्थी के विरुद्ध लगाये गये आरोप में अन्तर्निहित बोगस कार्डों की भी प्रस्तुति नहीं किया गया। जब जांच अधिकारी ने प्रार्थी अवतारो कर्मचारी से बोगस कार्ड के सम्बन्ध में प्रश्न पूछे तो प्रार्थी ने इन सभी प्रश्नों के टालमटोल (evasive) उत्तर दिये। प्रार्थी ने यह भी स्पष्ट नहीं किया कि तब रेलवे में सबसे पहले कहां भरती हुआ था, कहां कब, किस तारीख में वह व दिन भरती हुआ था वह अब भी यह नहीं बता सका कि उसने किस अधिकारी के अधीन कार्य किया था

यही नहीं, उसने जिस जाली सर्विस कार्ड के आधार पर नौकरी प्राप्त की थी, को भी जांच अधिकारी के समक्ष प्रस्तुत नहीं किया। जांच अधिकारी ने जांच रिपोर्ट में इन तथ्यों का उल्लेख किया है कि जांच कार्यवारी किन-किन तारीख के लिए नियत की गयी थी। जांच के दौरान यह भी पाया गया था कि जाली सर्विस कार्ड पर जो अंगुरत निशानी अंकित था, वह अंगुरत निशानी प्रार्थी सीताराम का ही था इसके पुष्टि फिगर प्रिन्ट इन्स्पेक्टर ने जांचोपरान्त की थी अन्ततः जांच अधिकारी ने प्रार्थी के विरुद्ध की गयी जांचोपरान्त उसे जाली सर्विस कार्ड के आधार पर रेलवे में नौकरी प्राप्त कर रेलवे के साथ धोखाधड़ी करने के आरोप में दोषी पाया था और इस जांच रिपोर्ट के आधार पर अप्रार्थी ने प्रार्थी को नौकरी से हटा दिया था और उसकी गेगमेन की सेवायें तत्काल प्रभाव से समाप्त कर दी थी।

13. मैंने पूरी जांच पत्रावली का अवलोकन किया है। जांच पत्रावली के अवलोकन से स्पष्ट है कि अप्रार्थी नियोजक द्वारा प्रार्थी को उसके विरुद्ध लगाये गये आरोपों में बचाव में उसे पर्याप्त से अधिक अवसर प्रदान किया गया है, किन्तु प्रार्थी ने जांच के दौरान अपने बचाव में ऐसी कोई साक्ष्य प्रस्तुत नहीं की है जिसके आधार पर यह कहा जा सकता कि उसने जाली सर्विस कार्ड के आधार पर नौकरी प्राप्त नहीं की थी। मैं जांच अधिकारी द्वारा सन्निहित की गयी जांच में कोई त्रुटि होना नहीं पाता। मैं, प्रार्थी के विद्वान प्रतिनिधि श्री आर. एस. शर्मा के इस तर्क से सहमत नहीं हूँ कि अप्रार्थी नियोजक द्वारा प्रार्थी को बचाव का अवसर प्रदान नहीं किया गया है और जांच अधिकारी द्वारा नैसर्गिक न्याय सिद्धान्तों की अनुपालना नहीं की गयी है। पत्रावली के अवलोकन से तो प्रकट होता है कि प्रार्थी सीताराम ने उसके विरुद्ध लगाये गये आरोप का स्टेटमेंट आफ क्लेम में उल्लेख तक नहीं किया है। इस प्रकार प्रार्थी ने न्यायाधिकरण के समक्ष सही तथ्यों को नहीं रखकर सत्यता को छिपाया है और अधिनियम के आज्ञापक प्रावधानों की आड़ में न्यायाधिकरण से अनुचित रूप से लाभ प्राप्त करने का प्रयास किया है। प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है। ऐसा प्रतीत होता है कि जिस प्रकार प्रार्थी ने जाली सर्विस कार्ड के आधार पर रेलवे में नौकरी प्राप्त की थी उसी प्रकार प्रार्थी सर्व्वदा को छिपाकर न्यायाधिकरण के समक्ष अनुचित रूप से लाभ प्राप्त करने हेतु उपस्थित हुआ है। इस प्रकार प्रार्थी का यह कदम निन्दनीय है और मेरी दृढ़ सम्मति में अप्रार्थी सहायक इंजीनियर पश्चिम रेलवे कोटा खण्ड सवाईमाधोपुर द्वारा प्रार्थी सीताराम गेगमेन की सेवाओं को दि. 16-7-91 से समाप्त किया जाना पूर्णरूपेण उचित एवं वैध है और प्रार्थी, अप्रार्थी नियोजक से किसी प्रकार का कोई अनुत्तरे प्राप्त करने का अधिकारी नहीं है।

परिणामतः भारत सरकार, श्रम मंत्रालय नई दिल्ली द्वारा सम्प्रेषित निर्देश विवाद का इस प्रकार अतिवर्धन किया जाता है कि अप्रार्थी नियोजक सहायक अभियन्ता, पश्चिम रेलवे, कोटा डिविजन सवाईमाधोपुर द्वारा प्रार्थी

श्रमिक सीताराम पुत्र श्रीहं राध कूल मोणा, गेगमेन को दिनांक 16/7/91 से सेवा से पृथक् किया जाना उचित एवं वैध है और वह अप्रार्थी नियोजक से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

अधिनिर्णम आज दिनांक 4-9-2001 को खुले न्यायाधिकरण में सुनाया गया जिसे नियमानुसार समुचित सरकार को प्रकाशनाथ भिजवाया जावे।

भद्रेष चन्द्र भगवती
न्यायाधीश,

नई दिल्ली, 19 अक्टूबर 2001

का.आ. 3080—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधन के सबध नियोजको और उनके कर्मकारों के बीच, अनुबध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं ध्रम न्यायालय लखनऊ के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 18-10-2001 को प्राप्त हुआ था।

[स. एल-41012/165/98-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3080.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman which was received by the Central Government on 18-10-2001

[No. L-41012/165/98-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, LUCKNOW

PRESIDING OFFICER : RUDRESH
KUMAR

ADJUDICATION

I.D. No. 101/2000 (Kanpur No. 27/1999)
Ref. No. L-41012/165/98/IR(B-I) dated
15-2-1999

3364 GI/2001—30.

BETWEEN

The Divl. Organisation Secretary,
U.R.K. Union,
Village Harchandpur, Garhi Kanora,
Premvati Nagar, Takia Wali Masque,
Manak Nagar,
Lucknow (espousing cause of Chandra
Mohan),

AND

The Sr. D.P.O.,
Northern Railway,
Hazratganj
Lucknow.

AWARD

By reference No. L-41012/165/98/IR(B-I) dated 15-2-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) sub-section 2(A) of section 10 I.D. Act, 1947 (14 of 1947) made over this industrial dispute between The Divl. Organisation Secretary, U.R.K. Union, Lucknow (espousing cause of Chandra Mohan) and Sr. D.P.O., Northern Railway, Lucknow, to CGIT-cum-Labour Court, Kanpur for adjudication. Later, this dispute was transferred to this tribunal for adjudication.

The reference is produced as under :

“Whether the action of the Management of Northern Railway in not including the name of Shri Chandra Mohan in the seniority panel of 1983 was just and legal? If not, to what relief the workman is entitled to?”

2. The case of the workman, Chandra Mohan, is, that he was appointed on the post of loco cleaner w.e.f. 15-3-1978 and continued till 3-9-1981; that on 4-9-81 his services were dispensed with without any notice and compensation etc.; that he alongwith other workmen raised a industrial dispute (I.D. No. 48/83) before the CGIT-cum-Labour Court, Kanpur and the said court reinstated him with back wages; that the management, being aggrieved, filed writ petition No. 12743 of 1987 before the Hon'ble High Court against the said award, which upheld findings of the reinstatement with back wages in his favour

3. In compliance of the order dated 5-2-1990 of the Hon'ble High Court the

management by letter No. 220 E/1-5/Court Case/90 dated 29-8-90 reinstated the workman and paid him back wages. All those workmen who continued to work were included in seniority panel of 1983, but the workman was not considered as he was removed earlier w.e.f. 4-9-81. Later, Amarjeet Singh a junior to the workman was included in the panel by letter No. E/1-5/3/92-CAT dt. 30-9-93. The grievance of the workman, is that junior workman to him were given seniority and promoted due to his illegal termination which was later set aside by the Hon'ble High Court, and he was reinstated. The management partly complied with the reinstatement order by making good pecuniary loss but denying other service benefits like giving seniority and empaneling him in seniority panel of 1983. He was screened in the 1996 and instead of including his name in the panel of 1983, entered his name in panel of 1996 and thereby forfeited his seniority which should have taken into consideration as he was never terminated and was in service all along in view of reinstatement.

4. The management has admitted almost all the facts recited in the statement of claim i.e. the services of the workman were terminated w.e.f. 4-9-1981, that in I.D. No. 48/83, the CGIT-cum-Labour Court, Kanpur reinstated him with back wages; that the Hon'ble High Court in W.P. 12743 file by the management upheld findings of reinstatement and that the management in compliance of the court's order reinstated the workman and paid him back wages. However, the management contends that the workman was screened in the year 1996 and was rightly placed in seniority panel of 1996 and assigned duty of callman, in category 'D' post. It is pleaded that the workman is not entitled to be included in seniority panel of 1983.

5. Thus, the controversy centers round the issue whether the workman is entitled to be included in the seniority list of 1983, which was denied to him consequent upon his termination in the said year? In this context it is to be judicially scrutinised whether on reinstatement, the workman is entitled for re-consideration and his name should be included in the seniority panel of 1983, giving him seniority over his next junior?

6. It is not necessary to discuss oral and documentary evidence of the parties in detail,

in view of admitted facts. The workman was not in service due to illegal termination in the relevant year 1983, when seniority panel drawn and his name was not considered. His termination was quashed by the CGIT-cum-Labour Court, Kanpur in I.D. No. 48/83 and later the said award in his favour was upheld by the Hon'ble High Court by order dated 5-2-1990. The management complied reinstatement order treating the termination as non-est and paid back wages in compliance of the order of the Hon'ble High Court.

7. The reinstatement order was not qualified one to be given effect to the extent of monetary benefits only, logically and legally reinstatement required grant of all service benefits including seniority. The management complied the reinstatement order without giving seniority and released pecuniary benefits to the workman. It is not open to the management to contend that reinstatement should be limited to pecuniary benefits only. On quashing of termination order, it has to be assumed that the workman was never terminated and continued to be in service notionally. The effect of the reinstatement is that the workman Chandra Mohan would be deemed in service on the last post held on the date of termination, as his termination had not taken place at all. He is entitled to preference over his juniors.

8. The statement of claim recites that the workman Chandra Mohan was appointed as Loco Cleaner in the year 1978. There is nothing in the record to substantiate this fact. The workman has admitted there being no appointment order in his favour and his engagement in Locoshed occasioned as his father was a driver. His status as 'Loco Cleaner' was not discussed or adjudicated in I.D. No. 48/83 or the writ petition. The perusal of the award and the order of the High Court give clear inference that relief of reinstatement was given to the workman, as the management had failed to comply with provisions of section 25F of I.D. Act. This implies that he was a casual labour engaged in the loco shed initially and enjoyed said status at the date of termination. It is not correct that he was appointed as loco cleaner against substantive vacancies in the year 1978. Had it been so, he must have been appointed after due selection by a written order and in such case, section 25F of I.D. Act, had no application. In

any event, consequent upon reinstatement, the workman cannot be denied service benefits of the period in which he was not physically working due to illegal termination. All such period i.e. from 4-9-1981 till date of reinstatement, has to be treated as notional continuance giving all service benefits including seniority. It is not appropriate for this tribunal to direct inclusion of the name in the seniority panel of 1983 as it depends upon suitability and other factors also. However, the management is legally bound to consider inclusion of the name of the workman Chandra Mohan subject to his suitability and to place his name in the seniority panel of 1983 over his juniors.

As discussed above, the award is as under :

- (i) That the workman Chandra Mohan is entitled consideration for being placed in seniority panel of the year 1983, over his juniors, subject to his suitability; and
- (ii) that on his successful screening he is also entitled to service benefits available to his next junior.

LUCKNOW

9-10-2001

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 4 सितम्बर, 2001

का.प्र. 3081—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उन के कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक आधिकारण/श्रम न्यायालय, चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2001 को प्राप्त हुआ था।

[सं. एल-12012/467/86-डी II(ए)]

सी. गंगाधरन, अवसर सचिव

New Delhi, the 4th September, 2001

S.O. 3081.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 3-9-2001

[No. L-12012/467/86 D.II(A)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE SHRI B. L. JATAV, PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 29/89

D. K. Gupta,
Cashier-cum-Clerk,
represented by All India Dena Bank
Staff Federation and
Punjab Bank Employees Congress,
Head Office, Ludhiana.

... Workman.

Vs.

1. Dena Bank,
Central Post Office Road,
Ludhiana
through its Manager.
2. Dena Bank, Regional Office,
Keltron Chambers, 2nd Floor,
18/7-8, Arya Samaj Road,
Karol Bagh, New Delhi.

... Management.

APPEARANCES :

For the Workman—Shri T. C. Sharma.

For the Management—Shri Ashok Jagga.

AWARD

(Passed on 10th of August, 2001)

The workman has filed an application U/s. 33-A of the Industrial Disputes Act, 1947, which has been treated and registered as industrial dispute by this Tribunal. This application is being disposed off finally by passing the present order.

2. The case of the workman in brief is that the management had imposed the penalty of stoppage of two annual increments with cumulative effect upon him and transferred him from Ludhiana to Pathankot. Therefore, the workman raised an industrial dispute before A.L.C.(C), Chandigarh vide his letter dated 2nd June, 1986. The A.L.C.(C) issued notice to the management and the management filed its reply alleging their in false grounds. The conciliation proceedings were held by A.L.C.(C) who submitted the report of failure of conciliation proceedings to Government of India, Ministry of Labour, New Delhi vide his report dated 6-10-1986. The Central Government referred the industrial dispute to this Tribunal for adjudication, which has been registered as reference No. ID 62 of 1987.

3. It has been alleged in the complaint that the management acted in arbitrary manner and ignoring the provision of law, issued a memorandum dated 20-5-1987 causing threat to the workman that in case he did not report for duty and submit a satisfactory reply within 30 days, the consequences will follow as detailed in 4th Bipartite Settlement dated 17-9-1984. The workman submitted his reply requesting the management to allow him to resume duty at Ludhiana but the management arbitrarily and illegally issued a

letter dated 29-7-1987 stating therein that they were treating that the workman had abandoned the job of his own. This letter was replied by the workman but the management did not consider his reply and issued a letter dated 19-11-1987 stating therein that the workman had been treated as voluntarily retired. Thus the management has violated the provisions of Section 33 of the I.D. Act, 1947 during the pendency of I.D. 62 of 1987. Therefore, the order passed by the management are liable to be quashed. The said order be quashed and allow the workman to resume duty at Ludhiana. The cost of the proceedings may also be awarded to the workman.

4. The management has filed its written reply alleging that the service conditions of the workman have not been changed by the management. He was transferred from Ludhiana to Pathankot Branch in the interest of bank business but he refused to join his duties at Pathankot. The workman did not obey the orders of the management and he acted in defiance of the lawful orders issued by the management by insisting on his retention at Ludhiana branch. He remained absent from duty and he did not submit leave applications for sanction and to regularise his absence. The notices were issued to the workman to join his duties but he did not join his duty at Pathankot. Under these circumstances the management was compelled to issue notice dated 20-5-1987 to the workman about the voluntary cessation of employment after expiry of 90 days from the relieving of workman from Ludhiana branch on 4-6-1986. In this notice again the period of 30 days was given to him for reporting on duty at Pathankot but the workman did not join duty there. Therefore, the management issued final order dated 9-7-1987 of voluntary cessation of employment by the workman. Under these circumstances the complaint filed by the workman under Section 33-A is not maintainable which may be dismissed in the interest of maintaining discipline in the banking industry.

5. The workman has filed rejoinder reasserting the facts already alleged in the complaint.

6. In this case the admitted facts are that the management had imposed the penalty of stoppage of increments and the workman was transferred from Ludhiana to Pathankot. It is also an admitted fact that the industrial dispute was raised by the workman before A.L.C.(C), Chandigarh and the conciliation proceedings resulted in failure report to Appropriate Government. The appropriate Government has referred the dispute to this Tribunal which has been registered as I.D. No. 62/87.

7. The workman has submitted his affidavit Ex. W1 and the documents Ex. W2 to W12. The management has submitted the affidavit of Amar Singh which is Ex. M15 and the affidavit Ex. M16 of Shri R. V. Kalgavankar. Besides these affidavits the documents Ex. M1 to Ex. M14 have been submitted by the management.

8. In this case the material facts are admitted facts which are essential to decide the complaint. The first point for consideration is that whether the services of the workman were treated as abandonment of job during the pendency of any proceedings before this

Tribunal. It is an admitted fact that the Conciliation Officer submitted the report of failure of conciliation proceedings to appropriate Government vide his report dated 6-10-1986 which is W13. These conciliation proceedings relates to the stoppage of two annual increments with cumulative effect of the workman. This punishment was awarded by the management after the departmental enquiry which was held for the alleged misconduct of the workman. The reference order No. L-12012/467/86-D.II(A) dated 18-8-1987 was passed by the appropriate Government on 18-8-1987 which was registered in this Tribunal on 25-8-1987 as I.D. No. 62/87. The management issued the letter dated 20-5-1987 Ex. W2 directing the workman to join his duties at Pathankot branch within 30 days of the notice. But the workman did not join duties at Pathankot and submitted his reply vide his letter dated 26-5-1987 which has been exhibited as Ex. W3. The management issued another memorandum dated 29-7-1987 Ex. W6 which was received by the workman on 7-8-1987. He replied on 8-8-1987 insisting upon the management to retain him at Ludhiana. The workman did not join his duties at Pathankot. Thus it is evident that the workman was treated as voluntarily retired from service after 6-10-1986 and prior to 18-8-1987, vide letter dated 29-7-1987 (Ex. W6). Under these circumstances it cannot be held that during the pendency of any proceedings before this Tribunal the order dated 29-7-87 Ex. W6 was issued by the management. Therefore, the complaint U/S 33-A is not maintainable.

9. The appropriate Government has referred the industrial dispute to this Tribunal for adjudication which relates to the penalty of stoppage of two annual increments with cumulative effect. This penalty was imposed for the misconduct of the workman. The management has treated the workman that he had abandoned his job on his own violation. Therefore, the action taken by the management is not connected with the industrial dispute which is pending before this Tribunal. Therefore, the permission for taking alleged action is not required in this case. When the alleged action is not connected with the main reference the management cannot be held liable to be held responsible for the contravention of Section 33 of the Industrial Disputes Act, 1947.

10. Both the parties have cross-examined the witnesses of each other. But in this case all the material facts are admitted, therefore, it is not necessary to discuss their testimony. Other documents filed by both the parties are not material for unfolding the real controversy between the parties.

11. Taking into consideration the discussion made in proceedings paragraphs the complaint filed by the workman is not maintainable. Therefore, it is dismissed with no relief. Both the parties shall bear their own cost of these proceedings. Appropriate Government be informed.

Chandigarh,

10-8-2001.

B. L. JATAV, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

AWARD

का.आ. 3082 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार एफ.सी.आई. के प्रबन्धन के संदर्भ नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पञ्चाट को प्रकाशित करती है जो केन्द्रीय सरकार को 16-10-2001 प्राप्त हुआ था।

[सं. एल-22012/327/97-आई आर (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3082.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 16-10-2001.

[No. L-22012/327/97-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR

PRESENT :

Shri S. K. Dhal, OSJS, (Sr. Branch),
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Tr. Industrial Dispute Case No. 181/2000

Date of conclusion of hearing—11th September, 2001

Date of Passing Award—6th October, 2001

BETWEEN

The Management of the Regional Manager,
Food Corporation of India, Khadya
Bhawan, Satsang Vihar,
Bhubaneswar. ... 1st Party-Management.

AND

Their Workmen, represented through
The Regional Secretary, FCIEU,
Khadya Bhawan, Satsang Vihar,
Bhubaneswar. ... 2nd Party-Union.

APPEARANCES :

Shri Hari Sankar Das, D.M.(P),
Smt. Indira Pattnaik, A.M.(P). ... For the 1st Party-
Management

Shri S. C. Malla, Regional
Secretary, FCIEU,
Orissa Region. ... For the 2nd Party-
Union.

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/327/1997/IR(CM-II), dated 20-08-1998 :—

“Whether the action of the Management of FCI in not giving seniority to eight workmen (copy enclosed) from the date of their initial appointment is justified? If not, to what relief are the workmen concerned entitled?”

2. The case of the 2nd Party-Union may be stated in brief :—Eight persons belonging to the 2nd Party-Union were selected for regular appointment under the 1st Party-Management on 10-9-1975 and 16th March, 1976. After their selection they were appointed initially on casual basis as per the Order No. A1(5)/75, dated 23-9-1975 and 9-4-1976. They worked without any break. Regular appointment orders were issued to them on 11-3-1977. While finalizing the seniority list the 1st Party-Management fixed up their seniority from the date of their regularization. The 2nd Party-Union made representation requesting to make them senior from the date of their initial appointment. But it was turned down. So they raised a dispute and after failure of reconciliation the present reference has been made.

3. The 1st Party-Management in their Written Statement, more or less have admitted the case of the 2nd Party-Union. But they have taken the stand that the members of the 2nd Party-Union were selected by the 1st Party-Management and were appointed as casual workers on a daily wage basis during the year 1975 and 1976. It has been averred that during the continuance of the members of the 2nd Party-Union as casual employees, under reservation laws some S.C./S.T. candidates were recruited in the month of October, 1976 as regular employees. The members of the 2nd Party-Union could not be appointed as regular employees as there was a ban order. When the ban order was lifted the 1st Party-Management without going for further selection considering the work of the members of the 2nd Party-Union, regularized their services during March 1977. Thereafter while preparing the seniority list the candidates belonging to the S.C./S.T. who were recruited in the year 1976, when the members of the 2nd Party-Union were continuing on casual basis; were made senior and seniority of the 2nd Party-Union were given from the date of their regularization. According to the 1st Party-Management the 2nd Party-Union cannot claim seniority over previously selected regular S.C./S.T. candidates which was made in the year 1976.

4. On the pleadings of the above parties the following issues have been settled :

1. Whether the reference is maintainable in view of time barred?
- II. Whether the action of the Management in not giving seniority of Eight workmen named in the Annexure from the date of their Initial appointment is justified?

III. If not to what relief the workmen are entitled?

No oral evidence has been adduced on behalf of either of the parties, though the parties have relied on the documents.

FINDINGS

Issue No. I :

5. In this regard it has been strongly urged on behalf of the 1st Party-Management that, the reference is not maintainable having been raised after a long period. According to the 1st Party-Management the seniority list was finalized in the year 1977 and the representation of the members of the 2nd Party-Union was turned down in the year 1982. But the 2nd Party-Union slept over the matter and thereafter in the year 1998 i.e. 16 years after they have raised the dispute. According to the 1st Party-Management it is a stale proceeding and on that ground the reference will not be maintainable. On the other hand it has been submitted on behalf of the 2nd Party-Union that, when no restriction has been imposed regarding limitation in case of the Industrial Dispute, the submission made on behalf of the 1st Party-Management that the reference is not maintainable being a stale one cannot be accepted. After hearing both the parties I am not inclined to accept the submission made on behalf of the 2nd Party-Union. No doubt, no time limit has been prescribed for exercising of the powers by the appropriate Government to make a reference. But it does not mean that the power can be exercised at any point of time in as much as stale disputes can be referred. Even if no period of limitation has been provided for under the Statute during which, the appropriate Government can consider the matter for making a reference of any dispute for adjudication by the Industrial Tribunal or the Labour Court under Section 10 of the Industrial Disputes Act, inordinate delay or belated application in approaching the Labour forum for reference of disputes for adjudication is a valid ground for refusing reference. In the case of *Nadungadi Bank Limited Versus K. P. Madhavankutty* and others reported in A.I.R. 2000 S.C. 839 the Apex Court has laid down that, even though law does not prescribe any time limit for the appropriate Government to exercise its power under Section 10 of the Act, it is not that this power can be exercised at any point of time and to revive matters which had since been settled. In the instant case the representation of the 2nd Party-Union has been rejected in the year 1982. No reasonable explanation has been offered on behalf of the 2nd Party-Union for the cause of delay in raising the dispute. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. In this case, the representation of the 2nd Party-Union for change of their date of seniority was rejected in the year 1982. No efforts were taken on behalf of the 2nd Party-Union till the dispute was raised. As I have discussed, undisputedly, the members of the 2nd Party-Union slept over the matter for about 17 to 18 years and raised the dispute thereafter. So in my opinion the dispute has become a stale claim and that would be a valid ground for refusing the claim

of the 2nd Party-Union. In the other words the reference would not be maintainable. No convincing material has been placed on behalf of the 2nd Party-Union in support of the fact that the reference is not a stale one. Hence, this Issue is answered in favour of the 1st Party-Management.
Issue No. II :

6. As for this Issue is concerned, it has been submitted on behalf of the 2nd Party-Union that, the casual employment was not intimated in the call letter, which was issued to them. So according to the 2nd Party-Union while regularizing their services after lifting of the ban order, their services could have been regularized from the date of their joining in the services and accordingly their seniority list could have been prepared according to the date of their joining, not from the date of regularization. On the other hand, basing on the appointment letter issued to the members of the 2nd Party-Union it has been argued that, it was clearly mentioned that all the appointment was on casual basis. The fact that there was a ban order for regular appointment and that there was no ban order for the appointment of S.C./S.T. candidates has not been disputed by the 2nd Party-Union. I have gone through one of the appointment letter issued to one of the candidate wherein it has been clearly mentioned that, the candidates (including the members of the 2nd Party-Union) have been selected for engagement on casual basis to work against the vacancies of Asstt. Gr. III at the rate of Rs. 6 per day of work. When they have accepted the terms and conditions of the appointment order the members of the 2nd Party-Union now can not claim that their appointment was not on casual basis. The main grievance of the 2nd Party-Union is that the 1st Party-Management should have been given seniority to them from the date of their initial appointment as they could have been offered regular appointment after lifting of the ban on 8-1-1976. According to the 2nd Party-Union their case was recommended by the Senior Regional Manager to the Zonal Manager for regularization of their services with effect from 8th January, 1976 i.e. from the date of their initial appointment, but that was not considered. So according to the 2nd Party-Union the action of the 1st Party-Management that refuses to give them seniority from the date of their appointment is illegal. Admittedly the members of the 2nd Party-Union were appointed on casual basis. Their services could not be regularized because there was a ban order. While they were continuing as such, some S.C./S.T. candidates were recruited and were appointed as there was no ban order for those posts. When the ban order was lifted the 1st Party-Management without making fresh interview or selection regularized the services of the members of the 2nd Party-Union, and while preparing the seniority list they were placed according to their date of regularization. Though the posts were available and the members of the 2nd Party-Union were appointed against those vacant post they cannot claim their seniority from the date of their appointment, their appointment being on casual basis. So in my opinion, I do not find any irregularities to have been committed by the 1st Party-Management by giving them seniority from the date of their regularization. After hearing both the parties, as per my

above discussion, I am of the opinion that the action of the 1st Party Management in not giving seniority to the members of the 2nd Party-Union from the date of their initial appointment is not unjustified. Hence, this Issue is also answered in favour of the 1st Party-Management.

Issue No III :

7. In view of my findings in respect of Issue Nos. I and II, the 2nd Party-Workmen are not entitled for any relief.

8. Reference is answered accordingly.

Dictated and corrected by me.

S. K. DHAL, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3083.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार सी.आई.एल. के प्रबंधन के संबद्ध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/थ्रन न्यायालय कोलकाता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-10-2001 को प्राप्त हुआ था।

[स. एल.-22012/8/98-आई आर (सी-II)]

एन.पी. केसवन, डेस्क अधिकारी

New Delhi, the 19th October 2001

S.O. 3083.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CIL and their workman, which was received by the Central Government on 16-10-2001.

[No. L-22012/8/98-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 37 of 1998

PARTIES :

Employers in relation to the management of Coal India Limited.

AND

Their Workmen

PRESENT :

Mr. Justice Bharat Prasad Sharma, Presiding Officer.

APPEARANCE :

On behalf of Management.—Mr. S. K. Sen, Senior Personnel Officer.

On behalf of Workmen—Mr. Dababrata Dutta, President of the Union

STATE : West Bengal. INDUSTRY : Coal.

AWARD

By Order No. L-22012/8/98/IR(CM-II) dated 9-10-1998 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Dankuni Coal Complex in superseding Shri Malay Mishra by giving promotion to Sh. Subhashish Nag in technical Grade “E” is justified? If so, to what relief the workman is entitled?”

2. The present dispute has been raised by the Rashtriya Coal Mazdoor Sangh. Dankuni Coal Complex, a component of Coal India Ltd. The dispute has been raised regarding supersession of one employee, Malay Kumar Mishra. In the written statement filed on behalf of the union it has been stated that the said Malay Mishra presently an employee of Dankuni Coal Complex, hereinafter to be referred as D.C.C., was absorbed under the rules of the Eastern Coalfields Limited, a subsidiary of Coal India Ltd. with effect from 18th February, 1982 in Category-I Mazdoor as per National Coal Wage Agreement-II. It was done so when the Mechanical Soft Coke Plant at Kapsara Area was taken over by Eastern Coalfields Ltd. with effect from 18-2-1982. Malay Mishra was in Category-III as Pump/Exhauster/Blower Operator by an order of the Senior Personnel Officer, Lakhimate Colliery within Kapsara Area of Eastern Coalfields Ltd. on 30-9-1983. He was, thereafter, transferred to D.C.C. in his existing capacity and grade by an order issued by the Personnel Manager (AW) of the Coal India Ltd. dated 26-2-1987. On being released by the Agent of Lakhimate Colliery on 2-4-1987, he joined D.C.C. on 3-4-1987. The said Malay Mishra was converted and designated in parallel grade as Operator-III, Utility, Technical Grade-F from Category-III along with other three Operators similarly transferred from the same unit and he was given a notional seniority with effect from 3-4-1987, i.e. the date of his joining. The concerned employee was given financial benefit of the converted grade from 1-3-1990 by office order dated 20-3-1990. On 30-11-1990 there was an office order issued by the Personnel Manager, D.C.C. stating that Shri Malay Kumar Mishra Operator-III, Utility Grade-F was promoted to Technical Grade-E with effect from 30-11-1990. Thereafter, on 16-2-1991 the Personnel Manager, D.C.C. issued another office order in which the name of one Subhashish Nag, Operator-III, Utility, Technical Grade-F was mentioned at Serial No. 8 and it was stated that he was promoted to Technical Grade-E with effect from 1-4-1989. However, the said Subhashish Nag, was a newly appointed person and joined D.C.C. on 4-4-1988 as Operator-III, Utility, Technical Grade-F. Though he had appeared for an interview for the post of Operator-II, Utility on 22-9-1987, he was not found suitable for appointment as Operator-II, Utility. It is further stated that on 15-2-1991 Shri Malay Mishra was senior in Utility Section to Shri Subhashish Nag but on 16-2-91 because of the order of the Personnel Manager, D.C.C. he became junior in Technical Grade-F to Shri Nag. It is described as an instance of unfair labour practice. The management was

represented by the union to regularise the promotion of Malay Mishra with effect from 1-11-1989 which was the date of regularisation of Subhashish Nag, so that the seniority of Malay Mishra be maintained, but it was not acceded to by the management. It is also stated that a number of discussions were held by the union with the management regarding this demand along with other demands and in course of discussion the management admitted the justification of the demand of the union and assured that the case shall be considered, but no action was taken. It is also stated that the President of the union also requested the General Manager, D.C.C. by letter dated 12-12-94 for giving proper seniority to Malay Mishra, but the management ignored the request. Thereafter, the union again pointed out this issue in a demand alone with other demands at Serial No. 2 in the letter dated 12/13-6-1995 and a letter dated 12-7-1995, but the management ignored the demand. Thereupon, finding no alternative the union raised the dispute and gave a notice on 04-08-1995 to start agitation. However, a copy of the notice was sent to the Assistant Labour Commissioner(Central), Calcutta, who intervened in the matter and the discussion took place on several dates for conciliation, but the conciliation could not materialise. It is stated that the justification given by the management in denying proper seniority to Malay Mishra is as follows:

The management in the representation dated 16/22-11-1995 addressed to the Assistant Labour Commissioner(C) tried to give untrue picture to camouflage the issue and the attempt of the management was apparently illegal and an instance of unfair labour practice. It is further stated that as the conciliation could not materialise, the matter was referred to the Central Government by the A.L.C. and accordingly the present reference has been made. It has been stated on behalf of the Union that the action of the management in not regularising the promotion of Malay Mishra and giving preference in the matter of promotion to Subhashish Nag in Technical Grade-E be declared to be illegal and unjustified. It is also prayed that it be held that Malay Mishra be regularised on promotion in Technical Grade-E before 1-11-89 and he should be placed in the seniority list above Subhashish Nag. It is also stated that the direction be given to promote the said Malay Mishra to Technical Grade-D.

3. The management of D.C.C. filed a written statement in which the maintainability of the reference has also been challenged and it has been stated that the reference is not maintainable as the schedule itself is not actually an issue to be considered. It is stated that the commercial production of D.C.C. was started in limited scale with effect from May, 1990 and Malay Kumar Mishra was appointed on 18-12-1982 as daily rated mazdoor in Category-i in Lakhimata Colliery under the E.C.L. and while Malay Mishra was working as daily rated exhaustor operator in the category below the Grade-F in Lakhimata Colliery under Kapsara Area of E.C.L. he was transferred to D.C.C. on 3rd April, 1987 in his existing position and the transfer was also made at his own request on the ground that he wanted to come nearer to his native place at Burdwan. Accordingly, Malay Mishra was transferred from mine to mechanical plant of D.C.C. as daily-rated exhaustor operator which was not matching with his designation he was holding

in E.C.L. Subsequently, Shri Mishra was converted into monthly-rated pay structure and was designated in the parallel grade as Operator-III in Utility Section of D.C.C. in Technical Grade-F with effect from 1st May, 1990, but he was given a notional seniority from 3rd April, 1987, i.e. the date of his transfer. It is stated that on the basis of a D.P.C. Shri Mishra was promoted to Technical Grade-E with effect from 30-11-1990 and subsequently after fulfilling the eligibility criteria he was promoted to Technical Grade-E with effect from 1st of April, 1995, as Senior Operator. It is stated that on the other hand Subhashish Nag, Operator, Utility Section was appointed in D.C.C. on 4th April, 1988 in Technical Grade-F. Due to shortage of man power, immediately thereafter, he had joined the job of Technical Grade-E. It is stated that on 21st May, 1990 the Rashtriya Coal Mazdoor Sangh, D.C.C. forwarded a 24points charter of demands which included the question of regularisation of the employees deployed in higher grades to the Chief General Manager of D.C.C. The said charter of demands was discussed in details and on the pursuance of the Regional Labour Commissioner(Central), Calcutta, the parties agreed to sign a memorandum of settlement under section 12(3) of the Industrial Disputes Act, 1947 and it was agreed that the rest of the demands would be discussed bilaterally and sorted out amicably. It is further stated that pursuant to this agreement a memorandum of settlement was signed by both the parties in presence of the Regional Labour Commissioner(C) on 27-11-1990. It is said that this tripartite settlement contained clauses including the following clauses :

1. It is agreed to place in appropriate grade to these employees who may be identified to have continuously worked in the higher grade in various departments for more than 240 days (working) in Dankuni Coal Complex, Dankuni.
2. The identification of such employees remained purely the prerogative of the management and this would be done by the management exclusively.
3. It is agreed that the effect of such regularisation will be given from the date of such employees who found to have completed 240 working days deployed in higher nature of job.
4. This finally settles the dispute in respect of the regularisation of the workman in higher nature of job as one time and is a very special cases of dispensation.

It is further stated that it is therefore obvious that the settlement was on one time basis as a special case. It is further stated that in terms of the afore-said settlement the management identified the employees deployed in various higher grades and regularised the employees who had completed 240 days on or before the date of agreement, i.e. 27-11-1990 and accordingly the services of 129 workers were regularised in the grades where they were deployed. It is further stated that Shri Nag had continuously worked for more than 240 days in Technical Grade-E and therefore his service was regularised in Technical Grade-E with effect from 1-2-1989 in terms of this tripartite agreement and on fulfilling the criteria

he was promoted to Technical Grade-D with effect from 1st October, 1994. It is stated that it is, therefore, clear that Subhashish Nag was regularised in Technical Grade-E on 1st February, 1989 in terms of the provisions of the tripartite agreement as he had completed 240 days' work in Technical Grade-E when he was promoted to Technical Grade-D. But, Shri Malay Mishra was promoted in Technical Grade-E on 30-11-1990, i.e. long after the promotion of Shri Nag to Grade E. It is further stated that there is no case of supersession of Malay Mishra in the circumstance. The statements contained in the written statement of the union have been denied para-wise, excepting for the facts in existence and finally it has been stated that the entire allegation in the written statement of the union is baseless, unfounded and vague and therefore, the workman concerned is not entitled to any relief whatsoever.

4. A rejoinder was also filed on behalf of the union against the written statement of the management and certain assertions made on behalf of the management have been denied.

5. So far as the evidence is concerned, one witness each has been examined on behalf of the parties. WW-1, Santosh Kumar Roy happens to be the vice president of the D.C.C. Branch of the Rashtriya Coal Mazdoor Sangh the union concerned. He has stated that while Malay Mishra happens to be a member of his union, Subhashish Nag is a member of the C.I.T.U. union. It is further stated by him that Malay Mishra had joined on 18-2-1982 at E.C.L. and on 3-4-1987 he joined the D.C.C. on his transfer. At that time his designation was Pump Exhauster/Blower Operator in Category-III. He further stated that on 4-4-1988 one Subhashish Nag joined D.C.C. as Utility Operator in Technical Grade-F. According to the witness Category-III and Technical Grade-F are parallel. So, when Malay Mishra joined D.C.C. in 1987 though the post of Pump and Exhauster Operator was vacant, he was not allowed to work on the said work and was allowed to utilitarian jobs like, Pump Operator, Air Compressor Operator etc because that was the time of commissioning of the plant. However, he stated that Malay Mishra did not apply to the management for allowing him to do his duties in the Utility Section. It is further stated by him that by an office order dated 20-3-1990 there was conversion of Malay Mishra to Technical Grade-F with effect from the date of his joining D.C.C. and subsequently he was given promotion to Technical Grade-E on 30-11-1990. He stated that Subhashish Nag was posted in Technical Grade-F and there was no difference at all between the works of Malay Mishra and Subhashish Nag, because both of them were working in the same Utility Section. It is further stated that on 16-2-1991 Subhashish Nag was given promotion in Technical Grade-E with effect from 1-11-1989 and therefore, the union approached the management with a request not to supersede Malay Mishra vis-a-vis Subhashish Nag but it was not acceded to by the management and therefore, this dispute has been raised with a prayer that the seniority of Malay Mishra to be restored and he should be allowed all consequential benefits. In his cross-examination, the witness has stated that Malay Mishra was transferred to D.C.C. from E.C.L. on his own request. He also further stated that minimum remuneration in Technical Grade-F was Rs. 1075

while in Category III it was Rs. 1060.28p. only. It is further stated by him that the prevalent norm prescribed by J.B.C.I. at the relevant time was 3 years of service in lower grade for promotion to the next higher grade and Malay Mishra got his promotion in Technical Grade-E after completing 3 years of service in Technical Grade-F as per the norm. It is also further stated by him that after 3 years of his service in Technical Grade-F, he was again promoted to Technical Grade-D with effect from 1-4-1995. He also admitted in his cross-examination that there was a tripartite settlement on 27-11-1990 and it was agreed that the workman completing 240 days of service in a particular grade shall be eligible for regularisation in that grade, which was totally at the discretion of the management and on this basis the services of 140 were regularised. He has, however, stated that Subhashish Nag never worked in the higher grade than Malay Mishra at any point of time and therefore, the above terms of the office order were not applicable to him. He has further expressed his ignorance about the fact that Malay Mishra had made any representation to the management in this regard and it has been suggested to him that the said Malay Mishra did not come to depose in the Tribunal as he has no personal grievance. It was also suggested to him that Malay Mishra had become junior on promotion to higher grade as he was availing usual three years of service in the lower grade which was the basis for promotion to the higher grade. It has also been suggested that it is the union only which is interested in the matter and not the workman Malay Mishra himself. It has also been suggested to him that the dispute has been raised because of the infighting between the rival unions. However, he had denied the suggestions.

6. Management examined Shri Shukhendu Bikas Das Mahapatra the Personnel Manager of D.C.C. who stated that there was an agreement between the concerned union, Rashtriya Coal Mazdoor Sangh and the management of D.C.C. on 27-11-1990 and there was a clause in the agreement that if an employee continues to work for more than 240 days in a year in higher category, he shall be regularised in that category. He also further stated that there was a clause in the agreement that it will be the prerogative of the management to decide which of the workers have worked for 240 days in the higher category and in pursuance of that agreement services of 129 persons were regularised and there was no left out. He further stated that on 16-6-1991 a notice was issued by the then Personnel Manager stating that the regularisation job was closed as there was no objection on behalf of any body and subsequent to this notice also no objection was received from any workman. He further stated that the concerned workman Malay Mishra did not make any representation at that stage raising his grievance and claiming that he had worked for 240 days or more in a year and that his case was not considered. He further stated that Malay Mishra was earlier working at Lakhimata Colliery and he had applied being shifted to D.C.C. and at the time of his transfer he was in category-III as Exhauster/Blower/Pump Operator. He also stated that as this category was not existing in D.C.C. he was shifted to a parallel grade and designation on 1-3-1990, but he was given notional seniority from the date of his joining the D.C.C. However, he was given a higher

grade on his being offered a parallel grade and subsequently he was also given due promotion. He has also further stated that Subhashish Nag joined D.C.C. in Technical Grade-F on 4-4-1988 and he was regularised in the higher category in Technical Grade-E in pursuance of the agreement aforesaid and promoted to the higher grade subsequently. He, therefore, stated that the concerned union raised the dispute after two years of the regularisation of the workman concerned. In his cross-examination, however, he has stated that the said workman i.e., Malay Mishra was given a notional seniority with effect from 3-4-1987 in Technical Grade-F, but the grade was actually given to him on 1-3-1990 in the Utility Section. He has also stated that the eligibility criteria for promotion from Grade-F to Grade-E is 3 years of service and when Malay Mishra was given promotion to Grade-E he had completed 3 years period in Grade-F, though he was given notional seniority from a back date. He also further stated that Subhashish Nag joined D.C.C. on 4-4-1988 as Operator Technical Grade-F and he was also posted in the Utility Section. According to him, Malay Mishra was given the job of Pump Operator on 1-3-1990, but to facilitate him he was given notional seniority with effect from a back date.

7. So far as the documents are concerned, a number of documents have been filed on behalf of both the parties. Of the documents filed on behalf of the union, Ext. W-1 is the office order of the General Manager, Kapsara Area dated 15th February, 1982 regarding formulation of certain principles for workmen, Ext. W-2 is the office order of the management of Lakhimata Colliery dated 30-9-1983 in which the details of the workers have been noted and from this details it appears that the name of Malay Mishra finds place at Serial No. 6. His grade has been described as Category-III and his basic pay has been described as Rs. 16 35 per day. Ext. W-3 is the office order dated 26th February, 1987 by which the four persons including Malay Mishra were transferred to D.C.C. under the orders of the Personnel Manager (AW) of the C.I.L. and the name of Malay Mishra appears at Serial No. 4 and his grade has been described as Operator Category-III. Ext. W-4 is the order regarding release of the aforesaid four workmen. Ext. W-5 is the joining report of the said workman Malay Mishra. Ext. W-6 is the order of the Personnel Manager, D.C.C. dated 20th March, 1990 in which the category was granted to these workmen and the name of Malay Mishra appears at Serial No. 4. He was designated before conversion as Exhauster/Blower/Pump Operator and was designated after conversion as Operator-III, Utility Technical Grade-F. However, a notional seniority was granted to them with back dates. Ext. W-7 is the office order of the Deputy Personnel Manager of D.C.C. by which on the recommendation of the D.P.C. all these 4 transferred employees were promoted to different categories and by this order Malay Mishra was promoted to Operator-II, Grade-E. Ext. W-8 is the office order dated 16-2-1991 issued by the Personnel Manager of the D.C.C. regarding identification of employees for regularisation in various departments and their placement at suitable places and grades in terms of the tripartite settlement and the name of Subhashish Nag finds place in this document at Serial No. 8. He was accordingly promoted to Technical Grade-E with effect from 1-11-1989. Ext. W-9 is the appointment order of

Subhashish Nag. Ext. W-10 is minutes of meeting dated 11-3-1993 in which the item relating to Malay Mishra finds place at Serial No. 3. Ext. W-11 is another minutes of meeting dated 10-7-1993 in which mention of the name of Malay Mishra finds place at Serial No. 5. Ext. W-12 is another minute of discussion dated 25-7-1995 in which the mention of the matter relating to Malay Mishra is in paragraph 9. Ext. W-13 is the letter of the President of the Union to the General Manager, D.C.C. regarding the grievance of Malay Mishra. Ext. W-14 is a memorandum submitted by the union to the General Manager in which the matter of seniority of Malay Mishra finds place at Serial No. 9. Ext. W-15 is a letter of the union addressed to the General Manager, D.C.C. Ext. W-16 is the copy of the proceeding of conciliation in this regard.

8. So far as the documents filed on behalf of the management are concerned, Ext. M-1 is the office order dated 16-2-1991 by which Subhashish Nag was promoted to Technical Grade-E with effect from 1-11-1989. Ext. M-2 is the memorandum of settlement dated 27-11-1990 in which paragraphs 1 and 2 are relevant. Ext. M-3 is the notice dated 10/11-6-1991 containing the instruction regarding regularisation. Ext. M-4 is the circular connected with the cadre scheme of process personnel of the Joint Bipartite Committee for Coal Industry.

9. Apart from this document a chart has also been filed on behalf of the management from which it appears that Subhashish Nag joined the D.C.C. on selection against open advertisement on 4-4-1988 in Technical and Supervisory Grade-F under monthly rate pay structure and it also shows that since Shri Nag was engaged in higher category, therefore, on completion of 240 days, he was regularised in Technical Grade-E on 1-11-1989 in terms of the tripartite settlement and he got his next promotion on Technical Grade-D on 1-10-94. On the other hand, it appears that on the date of his joining on transfer from F.C.L. to D.C.C. Malay Kumar Mishra was Operator in Category-III as daily-rated mazdoor and his designation was changed as Utility Operator in Technical Grade-F with effect from 1-3-1990, though he was given a notional seniority from 3-4-1987. Thereafter, on the basis of the recommendation of the D.P.C. Shri Mishra was promoted as Operator Technical Grade-E with effect from 30-11-1990 and again he was promoted to Technical Grade-D on 1-4-1995.

10. From the oral evidence as well as the documents it becomes clear that Shri Malay Mishra was originally employed as mazdoor in Category-III on daily rate basis and when he was transferred to D.C.C. on his representation along with three others, his transfer was made with a condition that he will continue on the same terms and condition as before. Accordingly, he joined D.C.C. But, subsequently, because the category in which he was working is not available in the D.C.C., he was regularised against a post in Grade-F, which was a regular post on monthly salary basis and was of higher grade than the grade he was holding earlier. But, for the purpose of giving him financial benefit a notional seniority was given to him with effect from the date of his joining. But, in any case, his seniority could be counted only from the date of his actual promotion and not from the date of his joining. Because his regularisation to Grade-F

was effected on 1-3-1990, his seniority could not have been counted from the date of his joining for the purpose of further promotion. On the other hand, because Subhashish Nag on joining in Grade-F on 4-4-1988 continued to officiate in Grade-E and completed 240 days of working in that grade, he got regularised in Technical Grade-E on 1-11-1989. It is, therefore, obvious that whereas Subhashish Nag got regularisation in Technical Grade-E on 1-11-1989, Malay Mishra got it on 1-3-1990 and therefore, he could not claim seniority from Subhashish Nag. The management appears to have acted in conformity with the Rules and also in pursuance of the tripartite settlement on 27-11-1990.

11. It is very interesting to note that the dispute was raised by the union and all along the union pursued the matter before the management, though there was no personal representation made on behalf of the concerned workman Malay Mishra. The said workman also did not appear before the Tribunal to depose even to support his claim or raise any grievance. In this circumstance, it appears to be correct as suggested by the management that the present dispute has been raised by the union concerned only because of the union rivalry and admittedly the other workman Subhashish Nag happens to be a member of a rival union.

12. It is, therefore, clear that there is no material available to justify the claim of the union in this case and there is no reason to hold that the action of the management so far as promotion or seniority of Malay Mishra is concerned is unjustified or arbitrary or on account of any bias or prejudice against the workman Malay Mishra. In the circumstance, there is no merit in the claim of the union in this case and the workman concerned is not entitled to any relief whatsoever.

Dated, Kolkata,

The 3rd October, 2001.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3084—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रवर्धन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[स. एल-22012/10/93—आई आर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3084.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh, as shown in the Annexure in the Industrial Dispute between the employers in relation

to the management of FCI and their workman, which was received by the Central Government on 17-10-2001.

[No. L-22012/10/93-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR,
COURT, CHANDIGARH

I.D. No. 60/93

Sukhbir Singh Alias Sukha,

S/o Pritam Singh,

R/o Vill. Jaito Sarja,

Teh. Batala (PB).

— Petitioner

Versus

The Asstt. Manager,
Food Corporation of India,
Gurdaspur (PB).

APPEARANCES :

For the Workman : None.

For the Management : Ravi Kant Sharma.

AWARD

(Passed on 20th September, 2001)

The Central Government Ministry of Labour vide Notification No. L-22012 10/93-IR(C-II) dated 30-9-93 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Food Corporation of India in terminating the services of Shri Sukhbir Singh alias Sukha son of Shri Pritam Singh w.e.f. 29-9-88 is legal and justified? If not, to what relief the concerned workman is entitled to?”

2. None has put up appearance on behalf of the workman despite notice. It appears that workman is not interested to pursue with the present reference. In view of the above, since the workman is not interested to pursue with the present reference the same is returned to the Central Government for want of prosecution. Appropriate Government be informed. Chandigarh.

21-9-2001.

S. M. GOEL, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3085.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रवर्धन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[स. एल-22012/99/98—आई आर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3085.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 17-10-2001.

[No. L-22012/99/98-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GEOL, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHANDIGARH

Case No. I.D. 30/99

Sh. Bhag Singh R/o Mohala Satranghra,
Sultanpur Lodhi,
Kapurthala (PB).

Workman

Versus

Asstt. Distt. Manager,
Food Corporation of India,
Sultanpur Lodhi,
Distt. Kapurthala (PB).

Respondent.

APPEARANCES :

For the Workman : None.

For the Management : Santokh Singh.

. AWARD

(Passed on 8th October, 2001)

The Central Government Ministry of Labour vide Notification No. L-22012/99/98/IR(CM-II) dated 27th January, 1999 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Food Corporation of India, Distt. Manager Kapurthala (PB) and Asstt. Manager, FCI, Sultanpur Lodhi (PB) in terminating the services of Sh. Bhag Singh S/o Jagtar Singh, Ancillary w.e.f. 21-4-1997 is justified? If not, what relief the concerned workman is entitled to?”

2. Today the case was fixed for filing of claim statement. None appeared on behalf of the Workman despite several notices, nor any claim statement has been filed. It appears that workman is not interested to pursue with the present reference. In view of the above since none has put up appearance on behalf of the workman and no claim statement has been filed, present reference is returned to the Central Government for want of prosecution. Central Government be informed.

Chandigarh,

S. M. GEOL, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3086.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबन्धन के संबंध में नियोजक

और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[सं.एल.-22012/100/98-आई आर (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3086.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 17-10-2001.

[No. L-22012/100/98-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GEOL, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR,
COURT, CHANDIGARH

Case No. I.D. 31/99

Sh. Pritam Singh, S/o Sh. Sant Ram,
M. Pandory, Sultanpur Lodhi,
Distt. Kapurthala (PB).

Workman

Versus

Asstt. Distt. Manager,
Food Corporation of India,
Sultanpur Lodhi,
Distt. Kapurthala (PB).

Respondent.

APPEARANCES :

For the Workman : None.

For the Management : Santokh Singh.

AWARD

(Passed on 8th October, 2001)

The Central Government Ministry of Labour vide Notification No. L-22012/100/98/IR(CM-II) dated 27th January, 1999 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of FCI, Distt. Manager, Kapurthala (PB) and Asstt. Distt. Manager, Sultanpur Lodhi (PB) in terminating the services of Shri Pritam Singh, Ancillary w.e.f. 21-4-1997 is justified? If not, to what relief the concerned workman is entitled to?”

2. Today the case was fixed for filing of claim statement. None appeared on behalf of the Workman despite several notices, nor any claim statement has been filed. It appears that workman is not interested to pursue with the present reference. In view of the above since none has put up appearance on behalf of the workman and no claim statement has been filed, present reference is returned to the

Central Government for want of prosecution. Central Government be informed.

Chandigarh.

S. M. GOEL, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2001

का.आ. 3087.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.सी.एल. के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-10-2001 को प्राप्त हुआ था।

[स.एल-22012/380/96-आई आर (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3087.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MCL and their workman, which was received by the Central Government on 19th October, 2001.

[No. L-22012/380/96-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT :

Shri S. K. Dhal, OSJS, (Sr. Branch),
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Tr. Industrial Dispute Case No. 129/2001

Date of conclusion of hearing—27th September, 2001

Date of Passing Award—11th October, 2001

BETWEEN

The Management of the Project Officer,
Talcher Colliery of Mahanadi Coal Fields
Limited, P.O. Deulbera Colliery,
District Angul.

... 1st Party-Management.

AND

Their Workmen, represented through
The General Secretary, Talcher Coal
Mines Employees Union, At. Remuna,
P.O. Talcher, Distt. Angul. ... 2nd Party-Union

APPEARANCES :

Shri A. K. Parija, Personnel Manager,
Talcher Area M.C.L. For the 1st Party-
Management.

None. For the 2nd Party-Union

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/380/96-IR(C-II), dated 29-08-1997 :—

“Whether the action of the Management of Talcher Colliery of M.C.L. in not changing the date of birth of Shri Saita Naik, Pump Attendant, from 20-5-1938 to 16-7-1940 is legal and justified? If not, to what relief is the workman concerned entitled?”

2. The case of the 2nd Party-Union, is that he joined in Deulbera Colliery, on 1-12-1964 as Sand Loader. Thereafter he was transferred to Nandira Colliery, and subsequently to Talcher Colliery. According to him when he joined he showed his horoscope accordingly his date of birth was recorded as 16-7-1940. So in all official records his date of birth was recorded as 16-7-1940. But on 19-5-1981 the 1st Party-Management asked him to appear before the Age determination Committee for determination of his date of birth and the Committee without application of mind assessed his date of birth as 20-5-1938. According to the 2nd Party-Workman this assessment is illegal. So the 2nd Party-Union raised a dispute and as the reconciliation failed the present reference has been made.

3. The 1st Party-Management has filed their Written Statement. According to the 1st Party-Management, a Joint Bipartite Committee for Coal Industry (hereinafter JBCCI) is the highest policy formulating body functioning at the apex level which creates guidelines for solving wide range of problems uniformly concerning coal workers as regards to affecting/revision of wages, job description and specifications, service conditions, cadre schemes, maintenance of service records, rectification and creation of employees personal data etc. The Committee had informed the procedure for determination of age of the employees which was circulated in the year 1981. In the service records as well as in the Form-B records the date of birth of the 2nd Party-Workman was not mentioned. So the Workman was examined by the age determination committee, which assessed his age as 50 years on 20-5-1988. The Workman accepted the same. So accordingly the workman is made to retire. According to the 1st Party-Management the age of the Workman has been correctly assessed by the age determination committee.

4. On the above pleadings of the parties the following Issues have been settled :

1. Whether the action of the Management of Talcher Colliery of M.C.L. in not changing the date of birth of Shri Saita Naik, Pump Attendant from 20-5-1938 to 16-7-1940 is legal and justified?
2. If not, to what relief is the workman concerned entitled?

FINDINGS

Issue No. 1 :

5. It may be stated here that, after settlement of Issue, which was made on 12-10-1999 the 2nd Party-Union has not appeared before the Tribunal to adduce

either oral or documental evidence and he has not taken part in the proceeding, in spite of notice issued to him. So the 2nd Party-Union has been set ex parte.

6. The dispute has been raised at the instance of the 2nd Party-Union. So the initial burden lies on him to establish its case either by giving oral or by producing documentary evidence. But the 2nd Party-Workman has failed to place any materials in support of his case. In that case, it can not be said that the action of the 1st Party-Management of Falcher Colliery of M.C.L. in not changing the Date of birth of Shri Saita Naik, Pump Attendant, from 20-5-1938 to 16-7-1940 is unjustified. So this Issue is answered in favour of the 1st Party-Management.

Issue No. II :

7. In view of the above findings in respect of Issue No. I, the Workman is not entitled for any relief.

8. Reference is answered accordingly.

S. K. DHAL, Presiding Officer

नई दिल्ली, 19 अक्तूबर, 2001

का आ 3088—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.वी.एम.बी. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2001 प्राप्त हुआ था।

[स.एल.-23012/13/96-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3088.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BBMB and their workman which was received by the Central Government on 17-10-2001.

[No. L-23012/13/96-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

I.D. No. 9/98

Sh. Charan Singh &

Sh. Jasmer Singh.

C o. Sh. R. K. Singh, Secretary,
Nangal Bhakra Mazdoor Sangh,
Quarter No 35 G N. N. Road
Township Ropar.

.. Petitioner

Vs.

Chief Engineer, Transmission.

B.B.M.B. Sector-22C.

Chandigarh.

Respondent.

APPEARANCES :

For the Workman.—Sh. R. K. Singh.

For the Management.—Sh. C. L. Sareen,
Senior Personal Officer with Mrs.
Jyoti Kaushal, Law Officer.

AWARD

(Passed on 30th September, 2001)

The Central Govt. Ministry of Labour vide notification No. L-23012/13/96-IR (C-II) dated 31-12-97/1-1-1998 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of BBMB represented by the Chief Engineer (Transmission BBMB Sec. 22-C) Chandigarh in denying the benefits of Officiating Allowance or Pay of Foreman to Sh. Charan Singh and Jasmer Singh Electrical Fitters for the period 3-84 to 9-95 when they have worked as foreman is just and fair ? If not, to what relief the workmen are entitled ?”

The workmen appeared and made the statement that dispute has been settled with the Management amicably. They intends to withdraw the case against the Management. In view of the above, the request of the workmen accepted and no dispute award is returned to the Central Govt.

Chandigarh.

S. M. GOEL, Presiding Officer

नई दिल्ली, 19 अक्तूबर, 2001

का आ 3089—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.वी.एम.बी. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-10-2001 को प्राप्त हुआ था।

[स.एल.-23012/15/95-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th October, 2001

S.O. 3089.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BBMB and their workman which was received by the Central Government on 17-10-2001.

[No. L-23012/15/95-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 88 of 1997

Sh. Garib Singh.

C/o. Sh. R. K. Singh Parmar,

Qtr. No. 35/G. Nangal Township.

Distt. Ropar (Pb.). .. Petitioner.

Vs.

The Executive Engineer.

Transmission. B.B.M.B.,

Sector-22, Chandigarh. .. Respondent.

APPEARANCES

For the Workman.—Sh. R. K. Singh.

For the Management.—Sh. C. L. Sareen,
with Mrs. Jyoti Kaushan & Mrs.
Neeru Chaha.

AWARD

(Passed on 20th September, 2001)

The Central Govt. Ministry of Labour vide Notification No. L-23012/15/95-I.R. (C-II) dated 17th of January 1997 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Beas Construction Board represented through the Executive Engineer, Arrears Division, Bhiwani and Chief Engineer, Transmission, BBMB, Sector 22, Chandigarh in terminating the services of Sh. Garib Singh, Driver w.e.f. 1-5-81 is just and legal ?

If not, what relief the workman is entitled to ?”

2. The workman appeared and made the statement that dispute has been settled with the Management amicably. He intends to withdraw the case against the Management. In view of the above, the request of the workman accepted and no dispute award is returned to the Central Govt.

Chandigarh.

Dated : 20-9-2001

S. M. GOEL, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2001

का.आ. 3090.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (द) के उपखंड (vi) के उपबन्धों के अन्तर्गण में भारत सरकार के श्रम मंत्रालय की अतिवृत्ति संस्था का.आ. 994 दिनांक 27-4-2001 द्वारा जीमा खान उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 27-4-2001 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उपखंड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 27-10-2001 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा.सं.एम.-11017/15/97-आई.आर. (पीएन-आई.)]

एच. सी. गुप्ता, अवसर सचिव

New Delhi, the 22nd October, 2001

S.O. 3090.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 994 dated 27-4-2001 the Lead Mining Industry to be a public utility service for the purpose of the said Act for a period of six months from the 27-4-2001;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act, for a period of six months from the 27-10-2001.

[No. S-11017/15/97-IR(PL)(i)]

H. C. GUPTA, Under Secy.

नई दिल्ली, 22 अक्टूबर, 2001

का.आ. 3091 :—केन्द्रीय सरकार संतुष्ट हो जाने पर पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ड) के उपखंड (vi) के उपबन्धों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 995 दिनांक 27-4-2001 द्वारा जिंक खनन उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 27-4-2001 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ड) के उपखंड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 27-10-2001 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा.सं.एस.-11017/15/97-आई.आर. (पी.एल-(ii)).]

एच.सी. गुप्ता, अवर सचिव

New Delhi, the 22nd October, 2001

S.O. 3091.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 995 dated 27-4-2001 the Zinc Mining Industry to be a public utility service for the purpose of the said Act, for a period of six months from the 27-4-2001;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government

hereby declares the said industry to be a public utility service for the purposes of the said Act, for a period of six months from the 27-10-2001.

[No. S-11017/15/97-IR(PL)(ii)]

H. C. GUPTA, Under Secy.

नई दिल्ली, 22 अक्टूबर, 2001

का.आ. 3092 :—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 10 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग कर हुए, केन्द्रीय सरकार के दिनांक 27 मई, 2000 को भारत के राजपत्र के भाग 2, खण्ड 3 (ii) में प्रकाशित भारत सरकार के श्रम मंत्रालय की दिनांक 16 मई, 2000 की अधिसूचना का.आ. 1169 में निम्नलिखित संशोधन करती है :—

उक्त अधिसूचना में “धारा 10 की उपधारा (i) के खण्ड (ड) के अन्तर्गत केन्द्रीय सरकार द्वारा नियुक्त” शीर्षक के अन्तर्गत क्रमांक 24 के सामने की गई प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी अर्थात्:—

“श्री पी.एम. मंत्री
सदस्य कार्यकारी समिति,
भारतीय नियोजक परिसंघ,
सेना एवं नौ सेना भवन,
148 महात्मा गांधी रोड,
मुम्बई 400001”

[संख्या यू.-16012/1/99-एस.एस. I]

के.सी. जैन, निदेशक

New Delhi, the 22nd October, 2001

S.O. 3092.—In exercise of the powers conferred by Sub-Section (1) of Section 10 of the Employees State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour No. S.O. 1169, dated the 16th May, 2000 published in the Gazette of India, Part II, Section 3(ii) dated the 27th May, 2000 :

In the said notification under the heading “Appointed by the Central Government under clause (e) of Sub-Section (1) of Section 10” for the entries against S. No. 24, the following entries shall be substituted namely :—

“Sh. P. M. Mantri,
Executive Committee Member,
Employers Federation of India,
Army & Navy Building,
148-Mahatma Gandhi Road,
Mumbai-400001.”

[No. U-16012/1/99-SSI]

K. C. JAIN, Director